

November 29, 2021

60 DAY NOTICE OF INTENT TO SUE

for violations of the Safe Drinking Water and Toxic Enforcement Act of 1986
Sent in compliance with California Health & Safety Code §25249.7(d), *et seq.*

VIA CERTIFIED FIRST-CLASS MAIL

Carston Noble, CEO (or Current CEO)
Henkel AG & Company
5800 Bristol Parkway
Culver City, CA 90230

Current CEO or President
Thriving Brands LLC
8170 Corporate Park Dr., Suite 143
Cincinnati, OH 45242

The Corporation Trust Company as
Registered Agent for Henkel AG KGaA & Co.
Corporation Trust Center
1209 Orange St.
Wilmington, DE 19801

The Corporation Trust Company as
Registered Agent for Thriving Brands LLC
Corporation Trust Center
1209 Orange St.
Wilmington, DE 19801

The Dial Corporation d/b/a
Henkel North American Consumer Goods
5800 Bristol Parkway
Culver City, CA 90230

VIA FIRST CLASS MAIL
District Attorneys of California Counties and
City Attorneys, as in the Certificate of Service

VIA ELECTRONIC FILING

State of California Dept. of Justice, Office of
Attorney General of California filing link:
oag.ca.gov/prop65/add-60-day-notice

VIA E-MAIL

District Attorneys of California Counties and
City Attorneys, as in the Certificate of
Service.

To alleged violators and public enforcement agencies:

I represent Mosanthony Wilson (the “Noticing Party”) in this matter and write on his behalf pursuant to California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at California Health and Safety Code § 25249.5, *et seq.*, to notify you that Henkel AG & Co. KGaA (“Henkel AG”), The Dial Corporation d/b/a Henkel North American Consumer Goods (“Henkel USA”), and Thriving Brands LLC (“Thriving Brands”) (collectively “Violators” or “Noticed Parties”), violated Proposition 65 by selling the following aerosol deodorant/antiperspirants (“Specified Products”):

- Right Guard Sport, Fresh (scent), Up to 48 HR Odor Protection
- Right Guard Sport, Powder Dry (scent), Up to 48 HR Protection

without first providing a Proposition 65 compliant warning. Mr. Wilson is a California citizen who purchased Right Guard Sport Fresh Up to 48 HR Odor Protection aerosol antiperspirants in the State of California.

GENERAL INFORMATION

For general information, please see “The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary” prepared by the California EPA and attached to this notice as Appendix A. (Appendix not included in notice served on public enforcement agencies).

PURPOSE OF NOTICE

Proposition 65 requires the Noticing Party to provide a 60-day notice of intent to sue alleged violators of Cal. Health & Safety Code § 25249.6. With this notice of violation and intent to sue (“Notice”), the Noticing Party gives written notice of the alleged violation, bringing this action in the public interest as defined under the Cal. Health & Safety Code § 25249.7(d), seeking to prosecute the alleged continuing noncompliance and to warn consumers about their exposure to the violative chemical(s), or reduce and/or eliminate consumer exposures from each of the Specified Products listed in the table below, which are manufactured, disturbed, and/or sold by the Noticed Parties.

Mr. Wilson intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

DESCRIPTION OF VIOLATION

This Notice covers the violations of Proposition 65 that are currently known to the Noticing Party from information now available as specifically related to the violating products listed below and manufactured, distributed or/and sold by and through the Noticed Parties. Noticing Party is continuing its investigation that may reveal further violations.

The Specified Products subject to this Notice, the chemical identified as exceeding allowable levels, and the Noticed Parties responsible for sales of the Specified Products are as follows:

Specified Products	Violative Chemical	Noticed Parties
1. Right Guard Sport, Fresh (scent), Up to 48 HR Odor Protection Aerosol Antiperspirant 2. Right Guard Sport, Powder Dry (scent), Up to 48 HR Odor Protection Aerosol Antiperspirant	Benzene	1. Henkel AG & Co. KGaA (“Henkel AG”), 2. The Dial Corporation d/b/a Henkel North American Consumer Goods (“Henkel USA”), 3. Thriving Brands LLC (“Thriving Brands”)

The primary routes of exposure have been through dermal contact and inhalation.

Noticed Parties have manufactured, marketed, distributed and/or sold the Specified Products which, according to independent lab testing, have exposed and continue to expose consumers within the State of California to Benzene.

Pursuant to Proposition 65, Benzene is listed as a chemical known to the State of California to cause developmental toxicity, reproductive toxicity, and cancer. Accordingly, Cal. Health & Safety Code § 25249.6 requires that a “clear and reasonable” warning be provided prior to exposure to Benzene. The Noticed Parties are in violation of Proposition 65 because they failed to warn purchasers and consumers that the Specified Products expose users to Benzene. The Noticed Parties are knowingly and intentionally exposing consumers to Benzene without first providing a “clear and reasonable” warning.

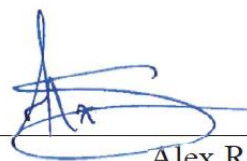
The method of warning should be a warning that appears on the product’s label and also at the point of sale for internet purchases. *See* Cal. Code Regs. tit. 27, § 25602, subd. (a)(3), and subd. (b). The Noticed Parties have not provided any Proposition 65 warnings as required by law or any other appropriate warnings that persons handling, applying and/or otherwise using the Specified Products are being exposed to Benzene.

The violations commenced when the Specified Products were first offered for sale in California, have continued every day since, and will continue every day henceforth until Benzene is removed from each of the Specified Products, reduced to allowable levels, or until a “clear and reasonable” warning is provided to consumers by the Noticed Parties, as applicable, in accordance with the law.

Mr. Wilson intends to file a lawsuit after 60 days based on the facts set forth in this Notice. Meanwhile we encourage a prompt resolution of this matter within the said period of 60 days where the Noticed Parties agree to (1) eliminate or reduce Benzene to an allowable level in the Specified Products or, as an alternative, (2) provide a Proposition 65-compliant warning on the label of the Specified Products and at the point of sale, and (3) pay applicable civil penalties and costs of bringing this action.

Prompt action by the Noticed Parties will prevent further consumer exposures to a dangerous chemical without warning, therefore rectifying these alleged ongoing violations of the California law and affording the Noticed Parties the opportunity to avoid increasing costs associated with noncompliance. ***Please direct all communications regarding this notice to my attention via email at astraus@milberg.com.***

Dated: November 29, 2021



Alex R. Straus

ATTACHMENTS

Pursuant to Title 27, C.C.R. § 25903(b), copies of the following documents are attached hereto for reference:

1. The "Certificate of Merit" is attached to each copy of this Notice pursuant to Title 11, C.C.R. § 3100.
2. Appendix A: "The Safe Drinking Water and Toxic Enforcement act of 1986 (Proposition 65): A Summary" is attached to each Notice sent to the Noticed Parties but omitted from Notices sent to public enforcers.
3. The "Confidential Facts supporting Certificate of Merit" only attaches to the Attorney Generals copy of this Notice pursuant to Title 11, C.C.R. § 3100.

CERTIFICATE OF MERIT
Health and Safety Code Section 25249.7(d)
To the Notice of Violation

I, Alex R. Straus, attorney at law, hereby declare:

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 and Safety Code §25249.6 by failing to provide clear and reasonable warnings.

I am the attorney for the Noticing Party.

I have reviewed the facts of this case and have consulted with one or more persons with relevant and appropriate experience and expertise who have reviewed facts, studies, and/or other data regarding the alleged exposure to the listed chemical that is the subject of the attached Notice of Violation dated November 29, 2021 (the "Notice").

I have reviewed the laboratory testing results for the chemical subject to the Notice and rely on these results. The testing was conducted by a reputable accredited testing laboratory and by experienced scientists with doctoral and other degrees in relevant sciences. The facts, studies and other data derived through this investigation overwhelmingly demonstrate that the alleged violators have exposed persons to the listed chemical that is the subject of the Notice and is known to the State of California to cause reproductive and/or developmental harm, and/or cancer.

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 Violators will be able to establish any of the affirmative defenses set forth in the statute.

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).

November 29, 2021



Alex R. Straus

CERTIFICATE 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 280 S. Beverly Drive, Beverly Hills, CA 90212.

1. Notice to Alleged Violators

On November 29, 2021, between 1:00 pm and 2:00 pm PST, I served:

- Notice of Violations of California Health & Safety Code § 25249.5 *et seq.*;
- Certificate of Merit
- Appendix “A” – “The Safe Drinking Water and Toxic Enforcement act of 1986 (Proposition 65): A Summary”

on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the parties below, and causing it to be deposited at a United States Postal Service Office for delivery by Certified First-Class Mail :

Carston Noble, CEO (or Current CEO)
Henkel AG & Company
5800 Bristol Parkway
Culver City, CA 90230

Current CEO or President
Thriving Brands LLC
8170 Corporate Park Dr., Suite 143
Cincinnati, OH 45242

The Corporation Trust Company
c/o Henkel AG KGaA & Co.
Corporation Trust Center
1209 Orange St.
Wilmington, DE 19801

The Corporation Trust Company
c/o Thriving Brands LLC
Corporation Trust Center
1209 Orange St.
Wilmington, DE 19801

The Dial Corporation d/b/a
Henkel North American Consumer Goods
5800 Bristol Parkway
Culver City, CA 90230

2. Notice to Attorney General

On November 30, 2021, between 4:00 pm and 5:00 pm PST, I served:

- Notice of Violations of California Health & Safety Code § 25249.5 *et seq.*,
- Certificate of Merit
- Confidential Facts in Support of the Certificate of Merit pursuant to Title 11, C.C.R. § 3102

on the following parties by filing electronically a true and correct copy thereof as permitted through the website of the California Office of the Attorney General via link at oag.ca.gov/prop65:

**State of California Department of Justice;
Office of the Attorney General of California.**

3. Notice to Public Enforcers via First Class Mail

On November 29, 2021, between 1:00 pm and 2:00 pm PST, I served:

- Notice of Violations of California Health & Safety Code § 25249.5 *et seq.*, and
- Certificate of Merit

on the parties below by placing a true and correct copy thereof in a sealed envelope, addressed to each of the District Attorney and City Attorney offices listed below, and causing each envelope to be deposited at a United States Postal Service mailbox for delivery by First Class Mail:

Dist. Attorney Alpine County PO Box 248 Markleeville, CA 96120	Dist. Attorney Lake County 255 North Forbes St. Lakeport, CA 95453	Dist. Attorney Sierra County PO Box 457 Downieville, CA 95936
Dist. Atty. Amador County 708 Court Street, Suite 202 Jackson, CA 95642	Dist. Atty. Los Angeles Co. Hall of Justice 211 West Temple St. Ste 1200 Los Angeles, CA 90012	District Attorney's Office Siskiyou County Courthouse 311 Fourth Street, Room 204 Yreka, CA 96097
District Attorney Butte Co. 25 County Center Dr, Ste 245 Oroville, CA 95965	District Attorney Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533
District Attorney Colusa County 310 6th Street Colusa, CA 95932	District Attorney Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney Stanislaus County 832 12 th Street, Ste 300 Modesto, CA 95354
District Attorney Del Norte County 450 H Street, Suite 171 Crescent City, CA 95531	District Attorney Mendocino County PO Box 1000 Ukiah, CA 95482	District Attorney Sutter County 446 Second Street Yuba City, CA 95991
District Attorney EL Dorado County 778 Pacific Street Placerville, CA 95667	District Atty Modoc County 204 S Court St, Room 202 Alturas, CA 96101-4020	District Attorney Tehama County PO Box 519 Red Bluff, CA 96080
District Attorney Fresno County 2220 Tulare St., Ste 1000 Fresno, CA 93721	District Attorney Orange County 300 N Flower St. Santa Ana, CA 92703	District Attorney Trinity County Post Office Box 310 Weaverville, CA 96093
District Attorney Glenn County Post Office Box 430	District Atty San Benito Co.	District Attorney

Willows, CA 95988 District Attorney Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501 District Attorney Imperial County 940 West Main St., Ste102 El Centro, CA 92243 District Atty Kern County 1215 Truxtun Avenue Bakersfield, CA 93301 District Atty Kings County 1400 West Lacey Blvd. Hanford, CA 93230	419 4th Street Hollister, CA 95023 District Attorney San Bernardino County 316 No. Mountain View Ave. San Bernardino, CA 92415 District Attorney San Mateo County 400 County Ctr., 3 rd Floor Redwood City, CA 94063 District Atty Shasta County 1355 West Street Redding, CA 96001 District Atty Mono County Post Office Box 617 Bridgeport, CA 93517	Tuolumne County 423 N Washington St. Sonora, CA 95370 District Attorney Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901 Los Angeles City Atty's Office City Hall East 200 N. Main St., Ste 800 Los Angeles, CA 90012 San Jose City Atty's Office 200 E Santa Clara St, 16 th Floor San Jose, CA 95113
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4. Notice to Public Enforces via Electronic Service

On November 30, 2021, between 10:00 am and 11:00 am PST, I served:

- Notice of Violations of California Health & Safety Code § 25249.5 *et seq.*, and
- Certificate of Merit

on the following parties below, all of which have request electronic service only via the following emails addresses:

Alameda County District Attorney CEPDProp65@acgov.org	Calaveras County District Attorney Prop65Env@co.calaveras.ca.us
Contra Costa County District Attorney sgrassini@contracostada.org	Inyo County District Attorney inyoda@inyocounty.us
Lassen County District Attorney mlatimer@co.lassen.ca.us	Mariposa County District Attorney mca@mariposacounty.org
Merced County District Attorney Prop65@countyofmerced.com	Monterey County District Attorney Prop65DA@co.monterey.ca.us
Napa County District Attorney CEPD@countyofnapa.org	Nevada County District Attorney DA.Prop65@co.nevada.ca.us
Placer County District Attorney Prop65@placer.ca.gov	Plumas County District Attorney davidhollister@countyofplumas.com
Riverside County District Attorney Prop65@rivcoda.org	Sacramento County District Attorney Prop65@sacda.org
San Diego City Attorney CityAttyProp65@sandiego.gov	San Diego County District Attorney SanDiegoDAProp65@sdca.org

San Francisco County District Attorney alchca.sargent@sfgov.org	San Francisco City Attorney Valerie.Lopez@sfcityatty.org
San Joaquin County District Attorney DA DAConsumer.Environmental@sjcd a.org	San Luis Obispo County District Attorney edobroth@co.slo.ca.us
Santa Barbara County District Attorney DAProp65@co.santa-barbara.ca.us	Santa Clara County District Attorney EPU@da.sccgov.org
Santa Cruz County District Attorney Prop65DA@santacruzcounty.us	Sonoma County District Attorney jbarnes@sonoma-county.org
Tulare County District Attorney Prop65@co.tulare.ca.us	Ventura County District Attorney daspecialops@ventura.org
Yolo County District Attorney cfepd@yolocounty.org	

Executed on November 30, 2021


Alex R. Straus

280 S. Beverly Drive
Beverly Hills, CA 90212