

SIXTY DAY NOTICE OF VIOLATION

*California Safe Drinking Water and Toxic Enforcement Act of 1986
(Cal. Health & Safety Code § 25249.5, et seq.) (“Proposition 65”)*

DATE: 1/31/2022

TO: Colorescience, Inc.
California Attorney General’s Office;
District Attorney’s Office for 58 Counties; and
City Attorneys for Los Angeles, Sacramento, San Diego, San Jose, and San Francisco

FROM: Piyush Yadav

RE: Supplemental Proposition 65 Notice (December 2020 AG Notice No. 2020-03297):
Titanium Dioxide (airborne, unbound particles of respirable size) in Certain Loose Powder Cosmetic Products

I. INTRODUCTION

My name is Piyush Yadav. 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.

I have identified violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at Cal. Health & Safety Code § 25249.6 *et seq.*, with respect to the products identified below in Exhibit A. These violations by have occurred and continue to occur because the alleged violator, Colorescience, Inc. (Colorescience), failed to provide required clear and reasonable warnings with these products.

Please allow this letter to serve as notice of these violations to Colorescience and the appropriate public enforcement agencies. Pursuant to Cal. Health & Safety Code § 25249.7(d), I intend 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.

II. GENERAL PROPOSITION 65 INFORMATION

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 or visit their website at <http://oehha.ca.gov/proposition-65>. I have enclosed with this letter a copy of a summary of Proposition 65 prepared by the Office of Environmental Health Hazard Assessment.

III. LISTED CHEMICAL

The violations involve exposure to the chemical Titanium Dioxide (airborne, unbound particles of respirable size). Effective September 2, 2011, the State of California officially listed Titanium dioxide

(airborne, unbound particles of respirable size) as a chemical known to cause cancer.

IV. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

Colorescience knowingly and intentionally exposed and continues to knowingly and intentionally expose consumers within the State of California to Titanium Dioxide (airborne, unbound particles of respirable size). The warning prong of Proposition 65 states 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 giving clear and reasonable warning to such individual...” *Cal. Health & Safety Code § 25249.6*.

The specific types of products that are causing consumer exposures in violation of Proposition 65, and that are covered by this Notice, are listed in Exhibit A below. All products within the type covered by this Notice shall be referred to hereinafter as the “Products.” Ongoing violations have occurred every day since at least the dates stated in Exhibit A, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. Colorescience violated Proposition 65 because it failed to provide persons using these Products with appropriate warnings that they are being exposed to these chemicals, including by failing to have a warning on product labels for Products sold in California and failing to have a warning on the webpages where the Products are sold to purchasers in California.

Through the act of buying, acquiring and using any and all of the Products, California citizens are exposed to Titanium Dioxide (airborne, unbound particles of respirable size) when used in a standard manner, including as indicated on the product labels. The route of exposure to this chemical has been and continues to be inhalation. Inhalation of the listed chemical occurs when the Products are applied to the skin and face as directed, which releases respirable-sized particles of titanium dioxide into the air. No clear and reasonable warning is provided with the Products regarding the carcinogenic hazards of airborne titanium dioxide.

V. CONTACT INFORMATION

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

Elizabeth Kramer
Erickson Kramer Osborne LLP
44 Tehama Street
San Francisco, CA 94105
Telephone: (415) 635-0631
Email: elizabeth@eko.law

VI. RESOLUTION OF NOTICED CLAIMS

Based on the allegations set forth in this Notice, I intend to file a citizen enforcement lawsuit against Colorescience unless it agrees in a binding written instrument to: (1) reformulate the identified products so as to eliminate further exposure to the identified chemicals, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned exposures to the identified chemicals, as well as expensive and time-consuming litigation.

If Colorescience is interested in resolving this dispute without resorting to time-consuming and expensive litigation, please feel free to contact my counsel identified in Section V 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; or (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 public enforcement officials.

VII. VIOLATING PRODUCTS (EXHIBIT A)

Loose Mineral Foundation Brush SPF 20 - Deep Mocha (18.6% titanium dioxide)
(sold since approximately 07/08/17)

Loose Mineral Foundation Brush SPF 20 - Light Ivory (18.6% Titanium Dioxide)
(sold since approximately 07/08/17)

Loose Mineral Foundation Brush SPF 20 - Medium Bisque (18.6% titanium dioxide)
(sold since approximately 07/08/17)

Loose Mineral Foundation Brush SPF 20 - Medium Sand (18.6% titanium dioxide)
(sold since approximately 07/08/17)

Loose Mineral Foundation Brush SPF 20 - Tan Golden (18.6% titanium dioxide)
(sold since approximately 07/08/17)

Loose Mineral Foundation Brush SPF 20 - Tan Natural (18.6% titanium dioxide)
(sold since approximately 07/08/17)

Sunforgettable Brush-on Sunscreen SPF 30 - Deep (21% titanium dioxide)
(sold since approximately 09/06/15)

Sunforgettable Brush-on Sunscreen SPF 30 - Fair (21% Titanium Dioxide)
(sold since approximately 4/18/10)

Sunforgettable Brush-on Sunscreen SPF 30 - Medium (21% Titanium Dioxide)
(sold since approximately 4/18/10)

Sunforgettable Brush-on Sunscreen SPF 30 - Medium Shimmer (21% titanium dioxide)
(sold since approximately 4/18/10)

Sunforgettable Brush-on Sunscreen SPF 30 - Tan (21% titanium dioxide)
(sold since approximately 4/18/10)

Sunforgettable Total Protection Brush-on Shield SPF 50 - Deep (23.9% titanium dioxide)
(sold since approximately 8/10/15)

Sunforgettable Total Protection Brush-on Shield SPF 50 - Fair (23.9% titanium dioxide)
(sold since approximately 5/28/11)

Sunforgettable Total Protection Brush-on Shield SPF 50 - Medium (23.9% titanium dioxide)
(sold since approximately 5/12/10)

Sunforgettable Total Protection Brush-on Shield SPF 50 - Tan (23.9% titanium dioxide)
(sold since approximately 5/28/11)

Sunforgettable Total Protection Brush-on Shield SPF 50 (with EnviroScreen™) - Deep (22.5% titanium dioxide)
(sold since approximately 5/28/11)

Sunforgettable Total Protection Brush-on Shield SPF 50 (with EnviroScreen™) - Fair (22.5% titanium dioxide)
(sold since approximately 5/28/11)

Sunforgettable Total Protection Brush-on Shield SPF 50 (with EnviroScreen™) - Medium (22.5% titanium dioxide)
(sold since approximately 5/28/11)

Sunforgettable Total Protection Brush-on Shield SPF 50 (with EnviroScreen™) - Tan (22.5% titanium dioxide)
(sold since approximately 5/28/11)

Further, it is this citizen's position that Colorescience 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.

CERTIFICATE OF MERIT

California Health and Safety Code Section 25249.7(d)

I, Elizabeth Kramer, hereby declare:

1. This Certificate of Merit accompanies the attached 1/31/2022, Supplemental sixty-day Notice of Violation (“Notice”) in which it is alleged that the parties identified in the Notice have violated California Health and Safety Code § 25249.6, by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party, Piyush Yadav.
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 exposures to the listed chemical that is the subject of the 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: 1/31/2022

/s/ Elizabeth Kramer
Elizabeth Kramer
Attorney for Piyush Yadav

PROOF OF SERVICE PURSUANT TO 27 CCR § 25903

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 over the age of 18 years, and not a party to the within action. My business address is 44 Tehama Street, San Francisco, CA. I am a resident or employed in the county where the mailing occurred.

On 1/31/2022, I served the following documents:

SUPPLEMENTAL SIXTY DAY NOTICE OF VIOLATION CAL. HEALTH & SAFETY CODE § 25249.5 *ET SEQ.*;
PROPOSITION 65: A SUMMARY;
CERTIFICATE OF MERIT

on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery as indicated below:

Counsel for the company to whom the Notice is addressed (served electronically by agreement);
City and District Attorneys listed in Attached Service List (First Class Mail).

Also on 1/31/2022, I transmitted via electronic mail the above-listed documents to the electronic mail addresses of the City and/or District Attorneys who have specifically authorized e-mail service and the authorization appears on the Attorney General's website. (See Attached Electronic Service List.)

Also on 1/31/2022, I served the California Attorney General (via website Portal) by uploading a true and correct copy thereof as a PDF file via the California Attorney General's website. Also on 1/31/2022, I also served the California Attorney General a true and correct copy of the CERTIFICATE OF MERIT ATTACHMENTS.

Dated: 1/31/2022

Respectfully Submitted,

/s/ Elizabeth Kramer
Elizabeth Kramer
Attorney for Piyush Yadav

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