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## **60-DAY NOTICE OF VIOLATION**

*Sent in compliance with California Health & Safety Code §25249.7(d)*

May 11, 2022

VIA CERTIFIED U.S. MAIL

Current President/CEO  
The Procter & Gamble Company  
1 Procter & Gamble Plaza  
Cincinnati, OH 45202

CT Corporation System  
as Registered Agent for The Procter & Gamble  
Company  
330 N Brand Blvd. STE 700  
Glendale, CA 91203

Rob Bonta  
Attorney General  
Office of the Attorney General of California  
Attn: Prop 65 Coordinator  
1515 Clay Street, Suite 2000  
Post Office Box 70550  
Oakland, California 94612-0550  
<https://oag.ca.gov/prop65/add-60-day-notice>

*Additional District & City Attorneys Copied*

Re: 60-Day Notice Pursuant to Cal. Health & Safety Code § 25249.5, et seq. Violation of Proposition 65 Warning

To Mr. Bonta and Whomever Else it May Concern:

I represent Donna Quinn, Janet Gonzales, and Raymundo Hernandez (the “Plaintiffs”) in this matter and write on their 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 section 25249.5, *et seq.*, to notify you that The Procter & Gamble Company (the “Violator”) violated Proposition 65 through the sale of Herbal Essences, Secret, and Old Spice-branded deodorants, body sprays, shampoos, and conditioners. Plaintiffs are California citizens who purchased the products at issue in this notice and are acting in the interest of the general public to promote awareness of exposures to toxic chemicals in products sold in California and to improve human health by reducing hazardous substances contained in consumer products.

## 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.

## PURPOSE OF NOTICE

Proposition 65 requires that notice of the alleged violation(s) and the intent to sue be given to the Violator at least 60 days before a Proposition 65 lawsuit is filed. This letter is sent pursuant to the provisions of Health & Safety Code § 25249.7 and satisfies the statutory notice prerequisite for filing an action in the Superior Court against the Violator. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to section 25249.7(d) of the statute, Plaintiffs 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.

## DESCRIPTION OF VIOLATION

The violations alleged by this notice consist of types of harm that may potentially result from exposures to the toxic chemical benzene, which was listed as a known hazardous substance in February of 1987.

**Alleged Violator.** The Procter & Gamble Company violated Proposition 65 through their production and sale of aerosol deodorants, body sprays, shampoos, and conditioners under its brands, including Old Spice, Secret, and Herbal Essences.

### **Consumer Product and Listed Chemical.**

<u>Product Name</u>	<u>Manufacturer</u>
Old Spice Pure Sport Antiperspirant	Procter & Gamble
Old Spice Below Deck Powder Spray Deodorant	Procter & Gamble
Old Spice Sweat Defense Stronger Swagger Dry Spray Antiperspirant	Procter & Gamble
Secret Powder Fresh 24-Hour Aerosol antiperspirant	Procter & Gamble
Secret Cool Light & Airy Smooth Feel, Dry Spray Antiperspirant	Procter & Gamble
Herbal Essences Blue Ginger Refresh Dry Shampoo	Procter & Gamble
Herbal Essences White Grapefruit & Mint Dry Shampoo	Procter & Gamble
Herbal Essences White Strawberry & Sweet Mint Dry Shampoo	Procter & Gamble
Herbal Essences Cucumber & Green Tea Dry Shampoo	Procter & Gamble

These are collectively referred to as the “Products.” The Products contain benzene, a harmful carcinogen known to cause cancer in humans. (CAS No. 71-43-2). On February 27, 1987, the State of California officially listed benzene as a chemical known to cause cancer. Recent analysis from Valisure LLC, an independent consumer testing lab, Yale University, and Procter & Gamble, demonstrates that the Products contain benzene levels that far exceed the FDA’s guidelines.

**Provision of Proposition 65.** This notice covers the “warning provision” of Proposition 65, which is found at California Health & Safety Code § 25249.6.

**Route of Exposure.** The National Institute for Occupational Safety and Health (NIOSH) designates benzene as a carcinogen and lists "inhalation, skin absorption, ingestion, skin and/or eye contact" as exposure routes. The consumer exposures that are the subject of this notice result from the purchase, acquisition, and recommended use of the Products, all of which are applied directly to the skin or scalp in the form of an aerosol mist. Consequently, the primary route of exposure is through dermal absorption and direct skin contact with the Products containing benzene. There is a further risk of benzene exposure through ingestion and inhalation because the aerosol spray Products are applied in close proximity to consumers’ the mouths and noses.

**Violations.** The Violator has exposed and continues to expose consumers within the State of California to benzene at levels that, upon reasonable use of the Products, exceed the No Significant Risk Level and the Maximum Allowable Dose Level without providing a clear and reasonable warning of this exposure. In particular, the Violator fails to warn consumers that the Products contain benzene -- a chemical known to the State of California to cause cancer.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since 2017 or earlier, 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 the Products’ purchasers 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 where the product is sold. The Violator violated Proposition 65 because it failed to provide consumers using these Products with appropriate warnings that they are being exposed to benzene.

**Resolution of Noticed Claims.** Based on the allegations set forth in this notice, Plaintiffs intend to file a citizen enforcement lawsuit against P&G unless it agrees to provide clear and reasonable warnings for products sold or otherwise provided to consumers in the future to eliminate unknowing exposures to benzene, and pay an appropriate civil penalty based on the factors enumerated in California Health and Safety Code Section 25249.7(b).

I represent Plaintiffs in this matter, as a licensed member of the California bar, in good standing. Please direct all communications regarding this notice to my attention via email at ray@boucher.la.

Dated: May 11, 2022

By: 

Raymond P. Boucher, Esq.

Attachments: (1) Appendix A, (2) Certificate of Merit, (3) Certificate of Merit Attachments, & (4) Proof of Service.

## **ATTACHMENTS**

1. Certificate of Merit;
2. Confidential Factual Information supporting Certificate of Merit (to Attorneys Generals and City Attorneys only);
3. Certificate of Service;
4. Appendix “A” - “The Safe Drinking Water and Toxic Enforcement act of 1986 (Proposition 65): A Summary” (to the Violator only).

## CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Raymond P. Boucher, 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 parties;

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: May 11, 2022



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Raymond P. Boucher, Esq.

**PROOF 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 21600 W Oxnard St Suite 600, Woodland Hills, CA 9136.

On May 11, 2022, I served the following documents:

60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH HEALTH & SAFETY CODE §25249.7(d); PROPOSITION 65: SUMMARY; CERTIFICATE OF MERIT; AND CERTIFICATE OF MERIT ATTACHMENTS

on the Violator listed below via First Class Certified Mail through the United States Postal Service by placing true and correct copy in a sealed envelope, addressed to the Violator and providing such envelope to a United States Postal Service Representative:

CURRENT PRESIDENT/CEO  
THE PROCTER & GAMBLE COMPANY  
c/o CT CORPORATION SYSTEM

as well as providing copies of the notice to the public enforcers by placing a true and correct copy in a sealed envelope, addressed to each party listed below and served as follows:

By uploading onto <a href="https://oag.ca.gov/prop65/add-60-daynotice">https://oag.ca.gov/prop65/add-60-daynotice</a>	The Attorney General of the State of California.
By directing the placement of each envelope in a United States Postal Service Box, first class postage pre-paid	The District Attorneys listed on the Mail Service List attached hereto.
By sending electronic mail	The District and City Attorneys listed on the Email Service List attached hereto.

A list of address for each of the recipients is attached.

Dated: May 11, 2022

  
\_\_\_\_\_  
Miranda Larsen

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