

60-DAY NOTICE OF VIOLATION

SENT IN COMPLIANCE WITH
Cal. Health & Safety Code § 25249.5, et seq.
("Proposition 65")

DATE: June 20, 2022

TO: **Clif Bar & Company; Clif Bar Baking Company of Indianapolis, LLC**
California Attorney General's Office
District Attorney's Office for All California Counties; and
City Attorneys for San Francisco, San Diego, San Jose, Sacramento and Los Angeles

FROM: Consumer Rights Advocates, LLC

I. INTRODUCTION

Consumer Rights Advocates, LLC ("CRA") is the noticing entity, acting in the interest of the general public. It seeks to reduce or eliminate the presence of hazardous substances in consumer products sold in California, and to ensure that California consumers are aware of the presence of such substances in consumer goods so that they can make an educated effort to limit their own exposure where deemed necessary.

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 violators **CLIF BAR & COMPANY; CLIF BAR BAKING COMPANY OF INDIANAPOLIS, LLC** (the "Violators"). The violations covered by this Notice consist of a summary of Proposition 65, Statement of Violation, Number and Duration of Violation, Product Category/Type, Listed Chemical(s), Preservation of Evidence, Product Exposure, Routes of Exposure, and type of harm resulting from exposure to the chemicals ("Listed Chemicals") as follows:

Product Exposure:	See Section VI. and VII. Exhibit A
Listed Chemical:	Lead
Routes of Exposure:	Ingestion and Dermal Absorption
Type of Harm:	Birth Defect and other Reproductive Harm

II. PROPOSITION 65 INFORMATION – SUMMARY

A summary of Proposition 65 and its implementing regulations, prepared by the Office of Environmental Health Hazard Assessment, the Lead agency designated under Proposition 65, is enclosed with the copy of the Notice served on the Notice Recipients. For more 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.

III. STATEMENT OF VIOLATIONS

The specific type of product that is causing consumer exposures in violation of Proposition 65, and that is covered by this Notice, is listed under "Product Category/Type" in section VI. and the specific toxicant(s)/Listed Chemical(s) is set forth in Exhibit A of Section VII. All products within the category covered by this Notice shall be referred to hereinafter as the "Covered Product(s)" or "Product(s)". Exposures to the Listed Chemical from the use of the Products have been occurring without the "clear and reasonable warning" required by Proposition 65. The method of the warning should be a label on the product itself. Without proper warnings regarding the toxic effects of exposures 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 Listed Chemical from the reasonably foreseeable use of the Products.

The Notice Recipients knowingly and intentionally exposed, and continue to knowingly and intentionally expose, consumers within the State of California to the Listed Chemical(s), a chemical known to the State of California to cause cancer, birth defects, and other reproductive harm, without first giving clear and reasonable warning of this exposure to such individuals. In particular, the Notice Recipients failed to provide a clear and reasonable warning to consumers that the Listed Product exposes consumers to Listed Chemical(s).

IV. NUMBER AND DURATION OF VIOLATIONS

Each and every sale of a Covered Product to a consumer in California without a clear and reasonable warning is a violation, including transactions made over-the-counter, through the internet, and/or via catalogue by the Notice Recipients and any other sellers of the Covered Products. These violations have been occurring since at least June 20, 2021, as well as every day since the Covered Products were first introduced and sold in the State of California. These violations will continue until “clear and reasonable warning” are provided prior to exposure of the Listed Chemicals.

V. ROUTE OF EXPOSURE

California consumers and other individuals, through the act of using and consuming the Covered Product, are exposed to the Listed Chemical. Consumers ingest the Listed Chemical by eating the Covered Product, or when they touch and handle the Covered Products, transfer the Listed Chemical from the Covered Products onto their fingers and hands, and transfer the Listed Chemical from their fingers and hands to their mouths through hand-to-mouth activities that may continue to occur for a significant period after contact with the Covered Products.

By way of example but not limitation, exposures occur when California Citizens use as an ingredient, eat, sample, or otherwise ingest the product. These acts cause consumers and other individuals to be exposed to the Listed Chemical through the routine consumption of all or a portion of the product containing the Listed Chemical. People likely to be exposed include both children and adults including women of childbearing age.

VI. PRODUCT CATEGORY/TYPE

Identified below is a specific example of Covered Products recently purchased and witnessed as being available for purchase or use in California (the “Exemplar Product”). Based on publicly available information, the retailers, distributors, and/or manufacturers of the Exemplar Product is also provided.

The Exemplar Product is identified for the Notice Recipients’ benefit to assist in their investigation of the allegations set forth in this Notice. **The Exemplar Product is not meant to be an exhaustive or comprehensive identification of each specific offending product falling within the specific type or category of Covered Products at issue in this Notice.** The Exemplar Product is a representative of a class of products called “CLIF BUILDERS PROTEIN BAR”. It is the CRA’s position that the Notice Recipients are obligated to conduct a good-faith investigation into other specific products falling within the type or category of Covered Products that have been manufactured, imported, distributed, sold, shipped, stored, or are otherwise within the Notice Recipients’ custody or control, so as to ensure the requisite toxic warnings were and are provided to California citizens prior to purchase.

<u>Exemplar Product</u>	<u>Chain of Commerce</u>	
	<u>Wholesaler; Retailer</u>	<u>Manufacturer; Importer; Distributor</u>
Clif Builders Protein Cookies 'N Cream UPC:722252601407	Clif Bar & Company Clif Bar Baking Company of Indianapolis, LLC	Clif Bar & Company Clif Bar Baking Company of Indianapolis, LLC

VII. EXHIBIT A – LISTED CHEMICAL

<u>Product Category / Type</u>	<u>Toxicant(s)</u>
Clif Builders Protein Cookies 'N Cream	Lead

VIII. RESOLUTION OF NOTICED CLAIMS

Consistent with goals of Proposition 65 and a desire to have these violations corrected, CRA is interested in seeking a resolution of this matter that includes a binding written agreement by the Violators to: (1) recall any products already sold, or undertake best efforts to ensure that the requisite health hazard warnings are provide to those who have received such products; (2) reformulate the Covered Product so as to eliminate further exposures to the Covered Chemical(s), or provide appropriate warnings on the labels of these products; and (3) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposure to the Covered chemical(s), as well as expensive and time-consuming litigation. It should be noted that counsel cannot (1) finalize any settlement until after the 60-day notice period has expired; or (2) speak for the California Attorney General or any District or City Attorney who has received this notice. Therefore, while reaching an agreement with CRA will resolve its claims; such an agreement may not satisfy the public prosecutors.

Proposition 65 requires that notice of intent to sue be given to the violators(s) sixty (60) days before the suit is filed. *Cal. Health & Safety Code § 25249.7(d)(1)*. With this letter, CRA gives notice of the alleged violations to Violator and the appropriate governmental authorities. In absence of any action by the appropriate governmental authorities within sixty (60) calendar days of the sending of this notice CRA may file suit. *See Cal. Code Civ. Proc. § 1013; Cal. Health & Safety Code § 25249.7(d)(1); and Cal. Code Regs. Tit. 27 § 25903(d)(1)*. Per *Cal. Code Regs. Tit. 27, § 25600.2(g)* (2018) the retail seller noticed on this 60 Day Notice is hereby requested to promptly provide the names and contact information for the manufacture(s), producer(s), packager(s), importer(s), supplier(s), and/or distributor(s) of the Listed Products in this Notice.

Consumer Rights Advocates, LLC remains open and willing to discuss the possibilities of resolving its grievance short of formal litigation.

IX. PRESERVATION OF EVIDENCE

This Notice also serves as a demand that the Notice Recipients 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 of the Listed Chemicals in the Covered Product; purchase and sales information for Covered Products (i.e., list of purchasers and quantity sold; list of manufacture(s), producer(s), packager(s), importer(s), supplier(s), and/or distributor(s) and quantity in each transaction, as well as the current inventory of the Covered Product in stock); efforts to comply with Proposition 65 with respect to the Covered Products; communications with any person relating to the presence or potential presence of the Listed Chemical in Covered Products; and representative exemplars of each specific model falling within the Covered Products. This demand applies to all relevant evidence for Covered Products sold in the State of California, as far back as June 20, 2021 through the date of any trial of the claims alleged in this Notice.

X. CERTIFICATE OF MERIT

Pursuant to Health & Safety Code §25249.6 and Title 11, California Code of Regulations, section 3100, a Certificate of Merit is attached hereto. A second copy of the entire notice and Certificate of Merit is served on the Attorney General with all supporting documentation required by section 3102 attached hereto.

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Davar Danialpour, 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 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 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 Violators 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: June 20, 2022



Davar Danialpour

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the Lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. The statute is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. This means that chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Period. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

¹ All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all full and part-time employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70- year lifetime. The Proposition 65 regulations identify specific “No Significant Risk Levels” (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA’s website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 et seq. of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level” divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA’s website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 et seq. of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a “significant amount” of the listed chemical entering any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” level for chemicals that cause cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title

11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS:

Contact the Office of Environmental Health Hazard Assessment’s Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@oehha.ca.gov.

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code

² See Section 25501(a)(4).

CERTIFICATE 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 and not a party to this case. I am a resident or employed in the county where the mailing occurred. My business address is 357 S. Robertson Blvd. 2ND Floor STE 400 Beverly Hills, CA 90211.

ON THE DATE SHOWN BELOW, I SERVE THE FOLLOWING DOCUMENTS:

- 1) **60-Day Notice of Violation of Health & Safety Code § 25249.5, ET SEQ.**
- 2) **The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary**
- 3) **Certificate of Merit pursuant to Health & Safety Code § 25249.7(d)**

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 by Certified Mail:

Clif Bar & Company Clif Bar Baking Company of Indianapolis, LLC 1451 66TH ST EMERYVILLE, CA, 94608	Clif Bar & Company Clif Bar Baking Company of Indianapolis, LLC 7575 Georgetown Rd Indianapolis, IN 46268-41323	C/O COGENCY GLOBAL, INC. Agent for Service of Process for Clif Bar & Company Clif Bar Baking Company of Indianapolis, LLC 1325 J Street STE 1550 Sacramento, CA 95814
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Additionally,

ON THE DATE SHOWN BELOW, I SERVE THE FOLLOWING DOCUMENTS:

- 1) **60-Day Notice of Violation of Health & Safety Code § 25249.5, ET SEQ.**
- 2) **The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary**
- 3) **Certificate of Merit pursuant to Health & Safety Code § 25249.7(d)**
- 4) **Supporting Factual Information Sufficient to establish the bases for Certificate of Merits**

on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at: <https://oag.ca.gov/prop65/add-60-day-notice>:

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Oakland, CA 94612-0550

Additionally,

ON THE DATE SHOWN BELOW, I SERVE THE FOLLOWING DOCUMENTS:

- 1) **60-Day Notice of Violation of Health & Safety Code § 25249.5, ET SEQ.**
- 2) **Certificate of Merit pursuant to Health & Safety Code § 25249.7(d)**

on each of the parties on the “Distribution List” attached, and depositing it at a U.S. Postal Service office with postage fully prepaid for delivery by First Class Mail, and on each of the parties listed on the “Electronic Service” when a true and correct copy thereof was sent via electronic mail.

Executed on June 20, 2022 in Beverly Hills, California.



Annabel Sebastian

Distribution List

Alpine County District Attorney PO Box 248 Markleeville, CA 96120	Lake County District Attorney 255 N. Forbes Street Lakeport, CA 95453	San Jose City Attorney's Office 200 East Santa Clara Street, 16 th Floor San Jose, CA 95113
Amador County District Attorney 708 Court Street, Suite 202 Jackson, CA 95642	Los Angeles County District Attorney 211 West Temple Street, Suite 1200 Los Angeles, CA 90012	San Mateo County District Attorney 400 County Ctr., 3 rd Floor Redwood City, CA 94063
Butte County District Attorney 25 County Center Drive, STE 245 Oroville, CA 95965	Los Angeles City Attorney's Office 200 N. Main Street Suite 800 Los Angeles, CA 90012	Shasta County District Attorney 1355 West Street Redding, CA 96001
Colusa County District Attorney 346 Fifth Street Suite 101 Colusa, CA 95932	Madera County District Attorney 209 West Yosemite Avenue Madera, CA 93637	Sierra County District Attorney PO Box 457 Downieville, CA 95936
Del Norte County District Attorney 450 H Street, Suite 171 Crescent City, CA 95531	Marin County District Attorney 3501 Civic Center Drive, Suite 145 San Rafael, CA 94903	Siskiyou County District Attorney PO Box 986 Yreka, CA 96097
El Dorado County District Attorney 778 Pacific St. Placerville, CA 95667	Mendocino County District Attorney PO Box 1000 Ukiah, CA 95482	Solano County District Attorney 675 Texas Street Suite 4500 Fairfield, CA 94533
Glenn County District Attorney PO Box 430 Willows, CA 95988	Modoc County District Attorney 204 S. Court Street, Suite 202 Alturas, CA 96101	Stanislaus County District Attorney 832 12 th Street, Suite 300 Modesto, CA 95354
Humboldt County District Attorney 825 5 th Street 4 th Floor Eureka, CA 95501	San Bernardino County District Attorney 303 West Third Street San Bernardino, CA 92415	Sutter County District Attorney 463 Second Street Yuba City, CA 95991
Imperial County District Attorney 940 West Main Street Suite 102 El Centro, CA 92243	Mono County District Attorney PO Box 617 Bridgeport, CA 93517	Tehama County District Attorney PO Box 519 Red Bluff, CA 96080
Kern County District Attorney 1215 Truxtun Avenue, 4 th Floor Bakersfield, CA 93301	Orange County District Attorney PO Box 808 Santa Ana, CA 92702	Trinity County District Attorney PO Box 310 Weaverville, CA 96093
Kings County District Attorney 1400 West Lacey Boulevard, Building # 4 Hanford, CA 93230	San Benito County District Attorney 419 Fourth Street, 2 nd Floor Hollister, CA 95023	Tuolumne County District Attorney 423 N. Washington Street Sonora, CA 95370
Berkeley City Attorney's Office 2180 Milvia St, 4 th Floor Berkely, CA 94704	Oakland City Attorney 1 Frank Ogawa Plaza 6 th FL Oakland, CA 94612	Yuba County District Attorney 215 Fifth Street, Suite 152 Marysville, CA 95901

Electronic Service

Alameda County District Attorney CEPDPProp65@acgov.org	Nevada District Attorney DA.Prop65@co.nevada.ca.us	San Luis Obispo Deputy District Attorney edobroth@co.slo.ca.us
Calaveras County District Attorney Prop65Env@co.calaveras.ca.us	Placer County District Attorney Prop65@placer.ca.gov	Santa Barbara Deputy District Attorney DAProp65@co.santa-barbara.ca.us
Contra Costa Deputy District Attorney sgrassini@contracostada.org	Plumas County District Attorney davidhollister@countyofplumas.com	Santa Clara Supervising Deputy District Attorney EPU@da.sccgov.org
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