

# 60 DAY NOTICE OF VIOLATION

*SENT IN COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)*

DATE: 06/30/2022

To: President or CEO – Del Destino – Atlanta Corporation  
President or CEO – Instacart  
California Attorney General's Office;  
District Attorney's Office for 58 counties;  
City Attorney's for San Francisco, San Diego, San Jose, and Los Angeles.

From: Keep America Safe and Beautiful

- I. Keep America Safe and Beautiful is a California nonprofit corporation acting in the interest of the general public. Keep America Safe and Beautiful seeks 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. This Notice is provided to the parties listed above pursuant to California Health & Safety Code §25249.6 et seq. ("Proposition 65"). The violations covered by this Notice consist of the product exposures, routes of exposures, and types of harm potentially resulting from exposure to the toxic chemical ("listed chemical") identified below as follows:

**Product Exposure:** See Section VII. Exhibit A  
**Listed Chemical:** Lead  
**Routes of Exposure:** Ingestion and Dermal absorption  
**Types of Harm:** Cancer, birth defects, and other reproductive harm

## II. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

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 Exhibit A in Section VII below. All products within the type covered by this Notice shall be referred to hereinafter as the "products."

The sale of these products in the state of California dating at least as far back as April 27, 2022 are subject to this notice. As a result, exposures to the listed chemical from the use of the products have been occurring without clear and reasonable warnings as required by Proposition 65. 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 toxic chemical from the reasonably foreseeable use of the products.

California citizens, including children, through the act of buying, acquiring or utilizing the products, are exposed to the listed chemical in homes, workplaces, and places throughout California where these products are used. By way of example but not limitation, exposures occur when California citizens use, store, move, remove, place, jump, sit, kneel, exercise, or otherwise handle these products, the listed chemical transfers onto the hands through routine touching of the parts and portions of the products containing readily available surface amounts of the listed chemical and is subsequently absorbed through the skin. Exposure may continue to occur for a significant period after the initial contact. These activities cause California citizens to be exposed directly through migration of the listed chemical from the products. California citizens likely to be exposed are men, women, and children. These violations and threatened violations pertain to Proposition 65 chemicals that are listed as Reproductive Toxicity.

## III. CONTACT INFORMATION

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

Keep America Safe and Beautiful  
c/o Law Offices of Stephanie Sy  
11622 El Camino Real, Suite 100  
San Diego, CA 92130  
Tel: (858) 746-9554  
Email:stephanie@stephaniesylaw.com

#### IV. 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. For the Violator's reference, I have attached a copy of "Proposition 65: A Summary" which has been prepared by OEHHA.

#### V. RESOLUTION OF NOTICED CLAIMS

Based on the allegations set forth in this Notice, I intend to file a citizen enforcement lawsuit against the alleged Violator unless such Violator enters into a binding written agreement to: (1) recall products already sold or undertake best efforts to ensure that the requisite health hazard warnings are provided to those whom have received such products; (2) provide clear and reasonable warnings for products sold in the future or reformulate such products to eliminate the Lead exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health & Safety Code-§25249.7(b). If the alleged Violator is interested in resolving this dispute without resort to time-consuming and expensive litigation, please feel free to contact my counsel identified in Section III 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; nor (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 the public prosecutors.

#### VI. ADDITIONAL INFORMATION

*THIS INFORMATION IS NOT REQUIRED TO BE PROVIDED UNDER TITLE 22CAL.CODE REGS., §12903 (b)(4).*

Identified below is a specific example of a product recently purchased and witnessed as being available for purchase or use in California that is within the category or type of offending product covered by this Notice. Based on publicly available information, the retailers, distributors and/or manufacturers of the example within the category or type of product are also provided below. I believe and allege that the sale of the offending products also has occurred without the requisite Proposition 65 "clear and reasonable warnings" at one or more locations and/or via other means including, but not limited to, transactions made over-the-counter, business-to-business, through the Internet, and/or via catalog by the Violator and other distributors and retailers of the manufacturer.

Product*	Retailer(s)	Manufacturer(s)/Distributor(s)
Non Pareil Capers 32 OZ Bar Code 071270381984	Instacart	Del Destino-Atlanta Corporation

## EXHIBIT A

Product Category/Type	Such as *	Toxins
Non/Pareil Capers	Del Destino-Atlanta Corporation Non Pareil Capers 32 oz Bar Code Number 071270381984	Lead

\*The specifically identified example of the type of product which is subject to this Notice is for the recipient's benefit to assist in its investigation of, among other things, the magnitude of potential exposure to the listed chemical from other items within the product category/type listed in Exhibit A. It is important to note that this example is not meant to be an exhaustive or comprehensive identification of each specific offending product of the type listed under "Product Category/Type" in Exhibit A. Further, it is this citizen's position that the alleged Violator 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 are provided to California citizens prior to purchase.

## 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.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) 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.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

*The "Proposition 65 List."* Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. 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

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<sup>1</sup> 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>.

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](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.

*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 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 contaminant<sup>2</sup> 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.

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<sup>2</sup> See Section 25501(a)(4).

## 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.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at:  
<http://oehha.ca.gov/prop65/law/p65law72003.html>.

## 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](mailto:P65Public.Comments@oehha.ca.gov).

Revised: May 2017

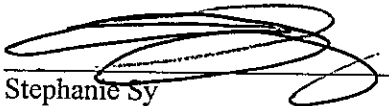
NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

**CERTIFICATE OF MERIT**  
Health and Safety Code Section 25249.7(d)

I, Stephanie Sy, 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 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 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: 06/30/2022

  
Stephanie Sy



## 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, 11622 El Camino Real, Suite 100, San Diego, CA 92130.

On 06/30/2022, 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 (SERVED ONLY ON THE ATTORNEY GENERAL)

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 or CEO  
Instacart  
50 Beale  
Suite 600  
San Francisco, CA 94105

Current President or CEO  
Del Destino-Atlanta Corporation  
1 Atlanta Plaza  
Elizabeth, NY 07206

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="http://oag.ca.gov/prop65/add-60-day-notice">http://oag.ca.gov/prop65/add-60-day-notice</a>	The Attorney General of the State of California
By placing each envelope in a United States Postal Service Box, first class postage pre-paid	The District Attorneys for 32 California Counties and; The City Attorneys for Los Angeles and San Jose.
By sending electronic mail	The following Counties: Alameda, San Joaquin, San Luis Obispo, Sonoma, Santa Clara, Napa, Lassen, Riverside, Tulare, Ventura, Yolo, Monterey, Sacramento, San Francisco, Santa Barbara, San Diego, Santa Cruz, Contra Costa, Inyo, Mariposa, Merced, Nevada, Placer, Orange, Plumas and Calaveras The City Attorneys for San Diego and San Francisco

A list of address for each of the recipient's is attached.

Executed on 06/30/2022, San Marcos, California

  
Antonio Sy

**By US First Class Mail:**

COLUSA COUNTY  
547 Market Street, Ste. 102  
Colusa, CA 95932

DEL NORTE COUNTY  
450 H Street, Room 171  
Crescent City, CA 95531

ALPINE COUNTY  
PO Box 248  
Markleeville, CA 96120

EL DORADO COUNTY  
778 Pacific Street  
Placerville, CA 95667

AMADOR COUNTY  
708 Court Street #202  
Jackson, CA 95642

FRESNO COUNTY  
2220 Tulare Street, Ste. 1000  
Fresno, CA 93721

GLENN COUNTY  
PO Box 430  
Willows, CA 95988

BUTTE COUNTY  
25 County Center Drive --  
Administration Building  
Oroville, CA 95965

HUMBOLDT COUNTY  
825 5th Street  
Eureka, CA 95501

**By Electronic Mail:**

ALAMEDA COUNTY  
Attn: Nancy O'Malley  
[CEPDProp65@accgov.org](mailto:CEPDProp65@accgov.org)

CALAVERAS COUNTY  
Attn: Barbara Yook  
[Prop65Env@co.calaveras.ca.us](mailto:Prop65Env@co.calaveras.ca.us)

CONTRA COSTA COUNTY  
Attn: Stacey Grassini  
[sgrassini@contracostada.org](mailto:sgrassini@contracostada.org)

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Attn: Mark Ankcorn  
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SAN JOAQUIN COUNTY  
Attn: Tori Verber  
[DAConsumer.Environmental@sjecda.org](mailto:DAConsumer.Environmental@sjecda.org)

MADERA COUNTY  
209 West Yosemite Avenue  
Madera, CA 93637

MARIN COUNTY  
3501 Civic Center Drive,  
Room 130  
San Rafael, CA 94903

MENDOCINO COUNTY  
PO BOX 1000  
Ukiah, CA 95482

MODOC COUNTY  
204 S. Court Street, Room 202  
Alturas, CA 96101

MONO COUNTY  
PO BOX 617  
Bridgeport, CA 93546

County of Los Angeles  
210 West Temple Street,  
Suite 18000  
Los Angeles, CA 90012-3210

ORANGE COUNTY  
341 The City Drive S., #407  
Orange, CA 92868

SAN BENITO COUNTY  
419 4th Street  
Hollister, CA 95023-3801

LASSEN COUNTY  
Attn: Michelle Latimer  
[mlatimer@co.lassen.ca.us](mailto:mlatimer@co.lassen.ca.us)

MARIPOSA COUNTY  
Attn: Walter W. Wall  
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MONTEREY COUNTY  
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NAPA COUNTY  
Attn: Alison Haley  
[CEPD@countyofnapa.org](mailto:CEPD@countyofnapa.org)

SAN FRANCISCO COUNTY  
Attn: Gregory Alker  
[Gregory.alker@sfgov.org](mailto:Gregory.alker@sfgov.org)

SAN FRANCISCO CITY  
Attn: Valerie Lopez  
[Valerie.Lopez@sfcivattv.org](mailto:Valerie.Lopez@sfcivattv.org)

SAN LUIS OBISPO COUNTY  
Attn: Eric J. Dobroth  
[edobroth@co.slo.ca.us](mailto:edobroth@co.slo.ca.us)

SAN MATEO COUNTY  
400 County Center, Third Floor  
Redwood City, CA 94063

SHASTA COUNTY  
1355 West Street  
Redding, CA 96001

SIERRA COUNTY  
100 Courthouse Square  
Downieville, CA 95936

SISKIYOU COUNTY  
PO BOX 986  
Yreka, CA 96097

SOLANO COUNTY  
675 Texas Street, Ste. 4500  
Fairfield, CA 94533

SAN BERNARDINO COUNTY  
316 N. Mountain View Ave  
San Bernardino, CA 92415-0004

KERN COUNTY  
1215 Truxtun Avenue  
Bakersfield, CA 93301

LAKE COUNTY  
255 N. Forbes Street  
Lakeport, CA 95453

IMPERIAL COUNTY  
940 West Main Street, Ste. 102  
El Centro, CA 92243

NEVADA COUNTY  
Attn: Clifford H. Newell  
[DA.Prop65@co.nevada.ca.us](mailto:DA.Prop65@co.nevada.ca.us)

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RIVERSIDE COUNTY  
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SANTA CLARA COUNTY  
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[EPU@da.sccgov.org](mailto:EPU@da.sccgov.org)

SANTA CRUZ COUNTY  
Attn: Jeffrey S. Rosell  
[Prop65DA@santacruzcounty.us](mailto:Prop65DA@santacruzcounty.us)

STANISLAUS COUNTY  
832 12th Street, Ste. 300  
Modesto, CA 95353

SUTTER COUNTY  
446 2nd Street, Suite 102  
Yuba City, CA 95991

TEHAMA COUNTY  
PO BOX 519  
Red Bluff, CA 96080

TRINITY COUNTY  
PO BOX 310  
Weaverville, CA 96093

TUOLUMNE COUNTY  
423 No. Washington Street  
Sonora, CA 95370

YUBA COUNTY  
215 Fifth Street, Ste. 152  
Marysville, CA 95901

Office of the City Attorney  
CITY OF LOS ANGELES  
200 N. Main Street  
Los Angeles, CA 90012

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200 East Santa Clara Street  
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San Jose, CA 95113

KINGS COUNTY  
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Hanford, CA 93230

SONOMA COUNTY  
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[jbarnes@sonoma-county.org](mailto:jbarnes@sonoma-county.org)

TULARE COUNTY  
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[Prop65@co.tulare.ca.us](mailto:Prop65@co.tulare.ca.us)

VENTURA COUNTY  
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[daspecialops@ventura.org](mailto:daspecialops@ventura.org)

YOLO COUNTY  
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[cfepd@volocounty.org](mailto:cfepd@volocounty.org)

PLACER COUNTY  
Attn: Morgan Briggs Gire  
[prop65@placer.ca.gov](mailto:prop65@placer.ca.gov)

ORANGE COUNTY  
Attn: Christina Lajos  
[Prop65Notice@da.occgov.com](mailto:Prop65Notice@da.occgov.com)

MERCED COUNTY  
Attn: Kimberly Lewis  
[Prop65@countyofmerced.com](mailto:Prop65@countyofmerced.com)