

Kevin J. Cole, Esq.  
e-Mail: kevin@kjclawgroup.com

September 8, 2022

**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

The Boots Company PLC  
c/o Legal Department  
PO Box 5300  
Nottingham, NG90 1AA

Boots Retail USA Inc.  
Goodwin Square  
225 Asylum Street, 20<sup>th</sup> Floor  
Hartford, CT 06103

Boots Retail USA Inc.  
c/o Legal Department  
40 Wall St.  
New York, NY 10005

Re: Proposition 65 Notice of Violation

To Whom It May Concern:

We represent Alex Martinez (“Plaintiff”), a citizen of the State of California acting in the interest of the general public. This letter serves as Notice that The Boots Company PLC and Boots Retail USA Inc. (collectively, “Boots”) (“Boots”) is in violation of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act, commencing with section 25249.5 of the Health and Safety Code (“Proposition 65”). In particular, the violation alleged by this Notice consists of types of harm that may potentially result from exposures to the toxic chemical Coconut Oil Diethanolamine Condensate. This chemical was listed as a carcinogen on June 22, 2012.

The specific type of product that is causing exposures in violation of Proposition 65 is “Boots Mediterranean Lemon Orange & Grape Shower Gel” (the “Product”). The route of exposure for the violations is dermal absorption by consumers. These exposures occur through the reasonably foreseeable use of the Product. The sales of the Product have been occurring since at least January 1, 2022; are continuing to this day; and will continue to occur as long as the Product subject to this Notice is sold to and used by consumers.

Proposition 65 requires that a clear and reasonable warning be provided regarding exposures to Coconut Oil Diethanolamine Condensate caused by ordinary use of the Product. Boots is in violation of Proposition 65 by failing to provide such warnings to consumers. As a result of the sales of this Product, exposures to Coconut Oil Diethanolamine Condensate have been occurring without proper warnings to California consumers.

Based on the allegations set forth in this Notice, Plaintiff intends to file a citizen enforcement lawsuit against Boots unless it agrees in a binding written instrument to: (1) immediately cease causing unwarned exposures to Coconut Oil Diethanolamine Condensate; (2) provide clear and reasonable warnings for past and ongoing exposures to Coconut Oil Diethanolamine Condensate from the Products; and (3) pay appropriate civil penalties based on the factors enumerated in California Health and Safety Code section 25249.7(b). If Boots is interested in resolving this dispute without resort to litigation, please feel free to contact me. However, the parties cannot: (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 the 60-day Notice. Therefore, while reaching an agreement with Plaintiff will resolve these claims, such agreement may not satisfy the public prosecutors.

This Notice also serves as a demand that Boots 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 use of Coconut Oil Diethanolamine Condensate in the Product; efforts to comply with Proposition 65 with respect to the use of Coconut Oil Diethanolamine Condensate in the Product; communications with any person relating to Coconut Oil Diethanolamine Condensate in the Product; and the length of time at which Boots sold the Product into the California marketplace.

If you have any questions or wish to discuss any of the above, please contact me.

Sincerely,



Kevin J. Cole, Esq.  
KJC Law Group, A Professional Corporation

See attached distribution list

Attachments:

- Certificate of Merit
- Certificate of Service
- Proposition 65 Summary (to the alleged violator only)
- Additional Supporting Information for Certificate of Merit (to the California Attorney General only)

## CERTIFICATE OF MERIT

I, Kevin J. Cole, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party identified in the notice has violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.

2. I am an 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 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 the information identified in Health and Safety Code section 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: September 8, 2022

A handwritten signature in black ink, appearing to read 'Kevin J. Cole', with a stylized flourish at the end.

Kevin J. Cole, Esq.  
KJC Law Group, A Professional Corporation

**CERTIFICATE OF SERVICE**

I, Chen Wang, declare that I am over the age of 18 years, and am not a party to the within action. I am employed in the County of Los Angeles, California, where the mailing occurs; and my business address is 9701 Wilshire Blvd., Suite 1000, Beverly Hills, CA 90212.

On September 8, 2022, I served the following documents: **(1) 60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(d); (2) CERTIFICATE OF MERIT; (3) PROPOSITION 65: A SUMMARY; and (4) CERTIFICATE OF MERIT ATTACHMENT (served only on the Attorney General)** on the party listed below by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at my business address with the U.S. Postal Service for delivery by Certified Mail with the postage thereon fully prepaid:

**Via Certified Mail**

The Boots Company PLC  
c/o Legal Department  
PO Box 5300  
Nottingham, NG90 1AA

Boots Retail USA Inc.  
Goodwin Square  
225 Asylum Street, 20th Floor  
Hartford, CT 06103

Boots Retail USA Inc.  
c/o Legal Department  
40 Wall St.  
New York, NY 10005

On September 8, 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.

On September 8, 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 email service and the authorization appears on the Attorney General's website.

**See Attached Service List**

On September 8, 2022, I served the following persons and/or entities at the last known address by placing a true and correct copy thereof in a sealed envelope and depositing it at my business address with the U.S. Postal Service for delivery with the postage thereon fully prepaid, and addressed as follows:

**See Attached Service List**

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///  
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 8, 2022 in Los Angeles, California.

A handwritten signature in cursive script that reads "Chen Wang". The signature is written in black ink on a light-colored background.

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Chen Wang

## Appendix A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA PROTECTION AGENCY THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACTION 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the office of Environmental Health Hazard Assessment, the lead and Toxic Enforcement Act 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 law. The reader is directed to the statute and its implementing regulations (See citations below) for further information.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. 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 Regulations, Sections 250000 through 27000.

#### **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, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 725 chemicals have been listed as of November 16, 2001. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release, or otherwise engage in activities involving those 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. 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. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of the listing of the chemical.

***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. Discharges are exempt from this requirement if they occur less than twenty months after the date of the listing of chemical.

#### **DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?**

Yes. The law exempts:

***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.

***Exposures that pose no significant risk of cancer.*** For chemicals that are listed as known to the State to cause cancer (“carcinogens”), a warning is not required if the business 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 for more than 250 listed carcinogens.

***Exposures that will produce no observable reproductive effect at 1,000 times the level in question.*** For chemicals known to the State to cause birth defects or other reproductive harm (“reproductive toxicants”), a warning is not required if the business 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 (NOEL),” divided by a 1,000- fold safety or uncertainty factor. The “no observable effect level” is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect.

***Discharge that do not result in a “significant amount” of the listed chemical entering into 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 list chemical has not, does not, or will not enter any drinking water source, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any

detectable amount; expect an amount that would meet the “ no significant risk” or “no observable effect” test if an individual were exposed to such an 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 (those in cities with a population exceeding 750,000). Lawsuit 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. A notice must comply with the information and procedural requirements specified in regulations (Title 27. California Code of Regulations, Section 25903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of 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 of law to stop committing the violation.

#### **FOR FURTHER INFORMATION...**

Contact the Office of Environmental Health Hazard Assessment= Proposition 65 Implementation Office at (916)445-6900

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# SERVICE LIST

The Honorable Nancy O'Malley Alameda County District Attorney 1225 Fallon Street, Room 900 Oakland, CA 94612	The Honorable Stacey Montgomery Lassen County District Attorney 220 South Lassen Street, Ste. 8 Susanville, CA 96130	The Honorable Candice Hooper San Benito County District Attorney 419 4th Street, Second Floor Hollister, CA 95203	The Honorable Gregg Cohen Tehama County District Attorney 444 Oak Street, Room L Red Bluff, CA 96080
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The Honorable Vern Pierson El Dorado County District Attorney 778 Pacific Street Placerville, CA 95667	The Honorable Tim Kendall Mono County District Attorney P.O. Box 617 Bridgeport, CA 93517	The Honorable Jeffrey Rosen Santa Clara County District Attorney 70 West Hedding Street, West Wing San Jose, CA 95110	The Honorable James Sanchez Office of the City Attorney, Sacramento 915 I Street, 4th Floor Sacramento, CA 95814
The Honorable Lisa Smittcamp Fresno County District Attorney 2220 Tulara Street, #1000 Fresno, CA 93721	The Honorable Dean Filipo Monterey County District Attorney P.O. Box 1131 Salinas, CA 93902	The Honorable Jeff Roseff Santa Cruz County District Attorney 701 Ocean Street, Room 200 Santa Cruz, CA 95060	The Honorable Jan Goldsmith Office of the City Attorney, San Diego 1200 Third Avenue, Suite 1620 San Diego, CA 92101
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The Honorable Thomas Hardy Inyo County District Attorney P.O. Drawer D Independence, CA 93526	The Honorable R. Scott Owens Placer County District Attorney 10810 Justice Center Drive, Suite 240 Roseville, CA 95678	The Honorable Krishna Abrams Solano County District Attorney 675 Texas Street, Suite 4500 Fairfield, CA 94533	
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