

December 21, 2022

## 60-DAY NOTICE OF VIOLATION OF CALIFORNIA SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT

Dear Alleged Violators and Appropriate Enforcement Agencies!:

This office represents Ramy Eden (“Claimant”) who serves this Notice of Violation (“Notice”) pursuant to California Health & Safety Code section 25249.7(d). This Notice serves to inform you that the Alleged Violators identified below (“Alleged Violator(s)”) are in violation of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”) codified at Cal. Health & Safety Code § 25249.5, *et seq.*

The alleged violators identified in Exhibit 1 below (“Alleged Violator(s)”) own and/or operate service stations, located at the addresses set forth in Exhibit 1 below (“Location(s)”), which sell Unleaded Gasoline. In violation of Cal. Health & Safety Code § 25249.6, Alleged Violator(s) expose individuals at these Location(s) to the chemical(s) identified below (“Listed Chemical(s)”)—which are known to the State of California to cause cancer and developmental harm—without first giving the statutorily required service station warnings set forth in California Code of Regulations Title 27, sections 25607.26 and 25607.27 or otherwise providing clear and reasonable warnings of such exposures.<sup>2</sup> Without these warnings, California citizens lack the information necessary to make informed decisions as to whether and/or how to eliminate (or reduce) the risk of exposure to the Listed Chemical(s) at these locations.

Claimant is a citizen of the State of California who is acting in the interest of the general public to promote awareness of exposures to toxic chemicals and to improve human health and the environment by reducing hazardous substances. Claimant intends to bring a private enforcement action, pursuant to Cal. Health & Safety Code §25249.7(d), to address these violations. Claimant is represented by the undersigned and may be contacted through the undersigned at the telephone number and address set forth in the letterhead above.

### **Description of Violations:**

Alleged Violator(s): Those identified in Exhibit 1 hereto (“Alleged Violator(s)”).

Time Period of Exposure: Violations have been occurring since at least December 21, 2019 and are continuing to this day.

Listed Chemical(s): Unleaded Gasoline, which is listed by the State of California under Prop. 65 as being known to cause cancer; Gasoline Engine Exhaust, which is listed by the State of California under Prop. 65 as being known to cause cancer; and Carbon Monoxide, which is listed by the State of California under Prop. 65 as being known to cause developmental toxicity. Unleaded Gasoline, Gasoline Engine Exhaust, and Carbon Monoxide are collectively referred to herein as the “Listed Chemical(s)”.

Description of Exposure: The exposures that are the subject of this Notice occur at the service stations owned and/or operated by the Alleged Violator(s) identified in Exhibit 1 (“Location(s)”). People who enter the Location(s) are exposed to the Listed Chemical(s) while at the Location(s). The primary route of exposure to each of the Listed Chemical(s) is through inhalation. Additional exposure to Unleaded Gasoline can occur if the Unleaded Gasoline sold at the Location(s) touches one’s hands or other body parts (e.g. if the Unleaded Gasoline sold there is spilled on someone during the fueling process and/or spilled when it is being put into storage containers, such as portable gasoline cans). Unleaded Gasoline present on the hands can be ingested when eating, smoking, touching one’s hand to their mouth, or by preparing food and through dermal absorption. No clear and reasonable warning is provided regarding the carcinogenic and developmental and reproductive toxic hazards of exposure to the Listed Chemical(s) at the Location(s).

### **Prop. 65 Information:**

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<sup>1</sup> The public enforcement agencies are those public agencies identified in the attached proof of service.

<sup>2</sup> This Notice does not allege exposure to the Listed Chemical(s) beyond the property owned or controlled by the Alleged Violator(s).

A copy of the Office of Environmental Health Hazard Assessment's *The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary* is being provided to the Alleged Violator(s).

**Evidence Preservation Request to Alleged Violator(s):**

*Alleged Violator(s) are hereby requested to preserve any and all evidence relating to the violations described herein.* This includes, without limitation, preserving any warning materials concerning exposure to the Listed Chemical(s) at the Location(s) and all communications regarding any such exposures. For any Alleged Violator who is a “Retail Seller”<sup>3</sup> this also includes, without limitation, documenting (through photography and/or video recording) the **present** existence, content, and location of all warning materials—including labels, signs, tags, and other language—in their retail locations that the Retail Seller contends provides consumers with the “clear and reasonable” warning required by Health & Safety Code section 25249.6 regarding the exposures (and preserving any historical depictions of such warning materials). To the extent any Alleged Violator(s) contends that they furnished warning materials to Retail Sellers concerning exposures at the Location(s), such Alleged Violator(s) should preserve all exemplars of such materials and all communications with Retail Sellers concerning such materials. The failure to preserve the requested evidence may result in sanctions and other penalties.

**Request for Information Concerning Source of the Product**

Pursuant to California Code of Regulations Title 27, section 25600.2, any Alleged Violator who is a “Retail Seller” is hereby requested to promptly provide the name and contact information for the manufacturer, producer, packager, importer, supplier, and distributor of the unleaded gasoline sold at the Location(s) during the past three years.

**Claims Resolution:**

To address the above-described violations, Claimant—through this law firm—intends to bring a private enforcement action against the Alleged Violator(s) pursuant to Cal. Health & Safety Code § 25249.7(d). However, consistent with the public interest goals of Proposition 65 and the desire to have these violations of California law quickly rectified, Claimant is interested in attempting to reach an efficient and equitable resolution of these violations without protracted litigation. Should the Alleged Violator(s) be interested in discussing such a resolution, I welcome them to contact me at the contact information listed in the letterhead above. Please note that Claimant is represented in connection with this matter and **may only be contacted through the undersigned.**

Respectfully,

*Jarrett S. Charo*

JARRETT S. CHARO, ESQ.

Enclosures: Certificate of Merit; Proof of Service; *The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary*

**EXHIBIT 1**

| Name of Alleged Violator(s) | Location(s)                     |
|-----------------------------|---------------------------------|
| AY Oil Inc.                 | 5706 Miramar Rd., San Diego, CA |

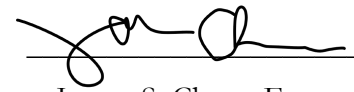
<sup>3</sup> “Retail Seller” has the same meaning as that set forth in California Code of Regulations Title 27, section 25600.1(l).

**Certificate of Merit**

I, Jarrett S. Charo, hereby declare:

- (1) This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the parties identified in the notices have violated Health and Safety Code section 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 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 plaintiffs' 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: December 21, 2022

  
Jarrett S. Charo, Esq.

## PROOF OF SERVICE BY CERTIFIED MAIL

I declare that I am a citizen of the United States and a resident of the County of Placer. I am over the age of eighteen (18) and not a party to the within action. My business address is P.O. Box 740, Penryn, CA 95663.

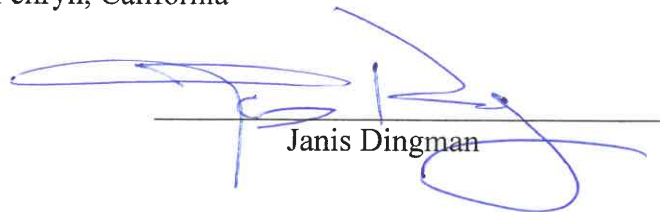
- On December 22, 2022, I caused the following documents to be served, 60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act; Certificate of Merit; The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary, as indicated on the attached service list:

AY Oil, Inc.  
David C. Jarvis, Agent  
1011 Camino del Rio South, # 210  
San Diego, CA 92108

AY Oil, Inc.  
Andy Hirmez, CEO  
5706 Miramar Road  
San Diego, CA 92121

- BY CERTIFIED MAIL – by placing a true and correct copy of the original thereof enclosed in a sealed envelope with postage thereon fully prepaid in the firm’s outgoing mail. A signed return receipt was requested. I am “readily familiar” with the firm’s practice of collecting and processing correspondence for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business.
- BY HAND DELIVERY – by delivering by hand and leaving a true copy addressed to the person at the address shown above.
- BY EMAIL– by causing a true copy thereof to be electronically transmitted to the parties, by using their email address as indicated above.
- STATE: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 22, 2022, at Penryn, California

  
\_\_\_\_\_  
Janis Dingman

## PROOF OF SERVICE BY U.S. MAIL

I declare that I am a citizen of the United States and a resident of the County of Placer. I am over the age of eighteen (18) and not a party to the within action. My business address is P.O. Box 740, Penryn, CA 95663.

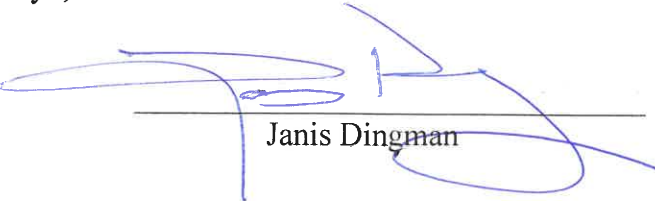
- On December 22, 2022, I caused the following documents to be served, 60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act; Certificate of Merit, as indicated below:

District Attorney  
SAN DIEGO COUNTY  
330 W. Broadway  
San Diego, CA 92101

San Diego City Attorney  
1200 Third Avenue  
Suite 1620  
San Diego, CA 92101

- BY MAIL – by placing a true and correct copy of the original thereof enclosed in a sealed envelope with postage thereon fully prepaid in the firm’s outgoing mail. I am “readily familiar” with the firm’s practice of collecting and processing correspondence for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business.
- BY HAND DELIVERY – by delivering by hand and leaving a true copy addressed to the person at the address shown above.
- BY EMAIL– by causing a true copy thereof to be electronically transmitted to the parties, by using their email address as indicated above.
- STATE: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 22, 2022, at Penryn, California

  
\_\_\_\_\_  
Janis Dingman

## PROOF OF SERVICE BY E-MAIL

I declare that I am a citizen of the United States and a resident of the County of Placer. I am over the age of eighteen (18) and not a party to the within action. My business address is P.O. Box 740, Penryn, CA 95663.

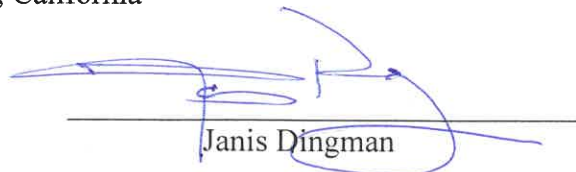
On December 22, 2022, I caused the following documents to be electronically served, 60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act; Certificate of Merit, as indicated on the attached service list:

SAN DIEGO COUNTY  
Summer Stephan, District Attorney  
SanDiegoDAProp65@sdcca.org

SAN DIEGO  
Mark Ankcorn, Deputy City Attorney  
CityAttyProp65@sandiego.gov

- BY MAIL – by placing a true and correct copy of the original thereof enclosed in a sealed envelope with postage thereon fully prepaid in the firm’s outgoing mail. A signed return receipt was requested. I am “readily familiar” with the firm’s practice of collecting and processing correspondence for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business.
- BY HAND DELIVERY – by delivering by hand and leaving a true copy addressed to the person at the address shown above.
- BY EMAIL– by causing a true copy thereof to be electronically transmitted to the parties, by using their email address as indicated on the attached service list.
- STATE: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 22, 2022, at Penryn, California

  
\_\_\_\_\_  
Janis Dingman

**Electronic Upload Proof of Service**

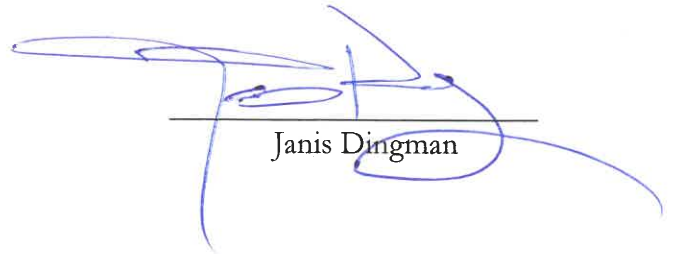
I declare that I am a citizen of the United States and a resident of the County of Placer. I am over the age of eighteen (18) and am not a party to the within action. My business address is P O Box 740, Penryn, CA 95663.

On December 22, 2022, I caused the following documents to be electronically served upon the Office of the Attorney General, State of California, via upload to the Office of the Attorney General's website at the following web address: <https://oag.ca.gov/prop65/add-60-day-notice>

60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act; and Certificate of Merit, with confidential attachment.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed December 22, 2022 at Penryn, California



Janis Dingman