

December 22, 2022

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

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.*

Claimant has identified violations of Proposition 65 with respect to the consumer products identified below (“Product”). In violation of Cal. Health & Safety Code § 25249.6, use of the Product exposes individuals to the chemical(s) identified below (“Listed Chemical(s)”) which are known to the State of California to cause cancer, reproductive, and developmental harm without first giving clear and reasonable warning of such exposure. 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) from the reasonably foreseeable exposure to and/or use of the Product.

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 from use of consumer products sold in California 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 (“Listed Chemical(s)”), which is listed by the State of California under Prop. 65 as being known to cause cancer.

**Product:** The Unleaded Gasoline identified in Exhibit 1 hereto (“Product”).

**Description of Exposure:** The exposures that are the subject of this Notice result from the acquisition, purchase, storage, handling, and/or the reasonable foreseeable use of the Product. These exposures take place throughout the County of San Diego. 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 touches one’s hands or other body parts (e.g. if the Unleaded Gasoline 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 hazards of exposure to the Listed Chemical(s).

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

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) and all communications regarding any such exposures. For any Alleged Violator who is a “Retail Seller”<sup>1</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 Retail Seller’s location(s), such

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<sup>1</sup> “Retail Seller” has the same meaning as that set forth in California Code of Regulations Title 27, section 25600.1(l).

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 Product(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)	Product	Non-Exclusive Further Description of Product <sup>2</sup>
Exxon Mobil Corporation; Circle K Stores Inc.	87, 89, and 91 octane unleaded gasoline sold under the Mobil brand	This gasoline is identified on gas pumps as “Regular”, “Extra”, and “Supreme+”, respectively. The pump may also bear the description “Synergy”
Chevron Products Company; Chevron Corporation; Circle K Stores Inc.	87, 89, and 91 octane unleaded gasoline sold under the Chevron brand	This gasoline is identified on gas pumps as “Regular”, “Plus”, and “Supreme”, respectively.
Marathon Petroleum Company LP; Shamaah, Inc.	87, 89, and 91 octane unleaded gasoline sold under the Arco brand	This gasoline is identified on gas pumps as “unleaded”, “unleaded plus”, and “unleaded premium”, respectively.
Phillips 66 Company; Apro LLC	87, 89, and 91 octane unleaded gasoline sold under the 76 brand	This gasoline is identified on gas pumps as “Regular”, “Plus”, and “Premium”, respectively.

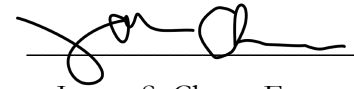
<sup>2</sup> The examples of the Product are not intended to be an exhaustive listing of each specific unit constituting the offending Product. Rather, they are provided to assist the recipients in identifying other units that comprise the offending Product.

**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 22, 2022

  
Jarrett S. Charo, Esq.

## 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.



### PROOF OF SERVICE

I declare that I am a citizen of the United States and a resident of the County of San Diego. I am over the age of eighteen (18) and not a party to the within action. My business address is 4079 Governor Dr., San Diego, CA, 92122.

#### Service via Certified Mail

On December 24, 2022, I caused the following documents to be served via USPS Certified Mail:

- 60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act;
- Certificate of Merit; and
- The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary

Upon those persons and/or entities identified in the attached "Service List A" 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.

#### Service via Electronic Mail

On December 24, 2022, I caused the following documents to be electronically served via electronic mail:

- 60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act; and
- Certificate of Merit

Upon the following persons and/or entities via the email addresses identified below:

SAN DIEGO COUNTY DISTRICT ATTORNEY

Summer Stephan, District Attorney SanDiegoDAProp65@sdca.org

CITY OF SAN DIEGO CITY ATTORNEY

Mark Ankcorn, Deputy City Attorney CityAttyProp65@sandiego.gov

#### Service via Electronic Upload

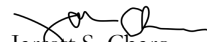
On December 24, 2022, I caused the following documents to be electronically served:

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

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>

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

Executed on December 24, 2022, at San Diego, California.

  
Jarrett S. Charo

Service List A

<p>Circle K Stores, Inc.  CSC-LAWYERS INCORPORATING SERVICE, Agent  2710 GATEWAY OAKS DR  STE 150N  SACRAMENTO, CA 95833</p>	<p>Circle K Stores, Inc.  KATHY CUNNINGTON, CEO  1130 W. WARNER ROAD, BUILDING B  TEMPE, Arizona 85284</p>
<p>Chevron Corporation  CSC - LAWYERS INCORPORATING SERVICE, Agent  2710 GATEWAY OAKS DR  STE 150N  SACRAMENTO, CA 95833</p>	<p>MICHAEL K. WIRTH, CEO Chevron  Corporation  6001 BOLLINGER CANYON ROAD  SAN RAMON, California 94583</p>
<p>Chevron Products Company  6001 Bollinger Canyon Rd.  San Ramon, CA 94583</p>	<p>Exxon Mobil Corporation  CSC - LAWYERS INCORPORATING  SERVICE, Agent  2710 GATEWAY OAKS DR  STE 150N  SACRAMENTO, CA 95833</p>
<p>Darren Woods, CEO Exxon Mobil Corporation  5959 LAS COLINAS BLVD  IRVING, TX 75039-2298</p>	<p>JOSEPH JULIANO, Agent and CEO Apro, LLC  4130 COVER STREET  LONG BEACH, CA 90808</p>
<p>Phillips 66 Company  CSC - LAWYERS INCORPORATING SERVICE, Agent  2710 GATEWAY OAKS DR STE 150N  SACRAMENTO, CA 95833</p>	<p>Mark Lashier, CEO Phillips 66 Company  2331 CITYWEST BLVD.  HOUSTON, TX 77042</p>
<p>Marathon Petroleum Company LP  CT Corp, Agent  330 N BRAND BLVD, GLENDALE,  CA 91203</p>	<p>Shamaah Inc.  CLAUDE S SHAMAAH, Agent  484 SOUTH RIVERSIDE AVE  RIALTO, CA 92376</p>
<p>CLAUDE S SHAMAAH, CEO Shamaah Inc.  1064 S Country Glen Way  Anaheim, California 92808</p>	