

LAW OFFICES OF GEORGE RIKOS

555 West Beech Street, Suite 500 • San Diego, CA 92101 • TEL: (858) 342-9161 • FAX: (858) 724-1453

March 13, 2023

**SIXTY-DAY NOTICE OF INTENT TO SUE FOR VIOLATION OF THE SAFE DRINKING
WATER AND TOXIC ENFORCEMENT ACT OF 1986**
(Cal. Health & Safety Code § 25249.5, et see.)
(“Proposition 65”)

Guangdong Fuwo Intelligent Manufacturing Co, LTD
Room 301, Building 12, No. 5
Xinxia Road, Humen Town, Dongguan city,
Guangdong Province, China

IMIRACLE (SHENZHEN) Technology Co, LTD
Room 1203, Block 1, Wanting Building, Xixiang
Subdistrict, Bao'an District
Shenzhen, China

Smoke Arsenal, Inc.
290 Carlingview Drive
Etobicoke, Ontario, Canada

Cloud 9
200 E. Grand Avenue
Escondido, CA 92025

AND THE PUBLIC PROSECUTORS LISTED ON THE DISTRIBUTION LIST ACCOMPANYING
THE ATTACHED CERTIFICATE OF SERVICE

Re: Violations of Proposition 65 concerning **ELFBAR BC 5000 Ultra containing Nicotine**

To Whom it May Concern:

Blue Water Cosaint, LLC, the noticing entity, located at 942 Ocean View Avenue, Encinitas, California 92024, serves this Notice of Violation (“Notice”) upon Guangdong Fuwo Intelligent Manufacturing Co, LTD, IMIRACLE (SHENZHEN) Technology Co, LTD, Smoke Arsenal, Inc., and Cloud 9.

(“Violator”) pursuant to and in compliance with Proposition 65. Blue Water Cosaint, LLC responsible individual within the entity is Charles Jamison whose contact information is: (760) 585-8888; 942 Ocean View Avenue, Encinitas, California 92024. However, Blue Water Cosaint, LLC has retained the following counsel: Law Offices of George Rikos, 555 West Beech, Suite 500, San Diego, California 92101, Telephone no. (858) 342-9161, email: George@georgerikoslaw.com. This Notice satisfies a prerequisite for **Blue Water Cosaint, LLC** to commence an action against Violator in any Superior Court of California to enforce Proposition 65. The violations addressed by this Notice occurred at numerous locations in each county in California as reflected in the district attorney addresses listed in the attached distribution list. **Blue Water Cosaint, LLC** is serving this Notice upon each person or entity responsible for the alleged violations, the California Attorney General, the district attorney for each county where alleged violations occurred, and the City Attorney for each city with a population (according to the most recent decennial census) of over 750,000 located within counties where the alleged violations occurred.

- **Blue Water Cosaint, LLC** is an organization based in the State of California and, as a limited liability company, is a “person” within the meaning of California Health & Safety Code §25249.11(a). By sending this Notice, **Blue Water Cosaint, LLC** is acting “in the public interest” pursuant to Proposition 65. **Blue Water Cosaint, LLC** is an entity dedicated to protecting the environment, improving human health, and supporting environmentally sound practices.
- This Notice concerns violations of the warning prong of Proposition 65, which states that “[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual ...” *Cal. Health & Safety Code* § 25249.6.
- **ELFBAR BC 5000 Ultra containing Nicotine**, which is known to the State of California to cause developmental toxicity. **Nicotine** was added to the Proposition 65 list on April 1, 1990, developmental toxicity, long before **Blue Water Cosaint, LLC** served this Notice. On information and belief, the violation has been ongoing since at least one-year prior to the date of this notice (March 13, 2022 to the present).
 - An exemplar of the violations caused by **ELFBAR BC 5000 Ultra** includes but is not limited to: **ELFBAR BC 5000 Ultra**
- This Notice addresses consumer products exposures. A “[c]onsumer products exposure” is an exposure which results from a person’s acquisition, purchase, storage, consumption, or other

reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service.” *Cal. Code Regs. 27 § 25602(b)*.

Violator caused consumer product exposures in violation of Proposition 65 by producing or making available for distribution or sale in California to consumers **ELFBAR BC 5000 Ultra**. The packaging for **ELFBAR BC 5000 Ultra** (meaning any label or other written, printed or graphic matter affixed to or accompanying the product or its container or wrapper) fails to provide a clear and reasonable Proposition 65-compliant warning. Nor did Violator, with regard to **ELFBAR BC 5000 Ultra**, provide a system of signs, public advertising identifying the system and toll-free information services, or any other system, which provided clear and reasonable warnings. Nor did Violator, with regard to **ELFBAR BC 5000 Ultra**, provide identification of the product at retail outlets in a manner that provided a warning through shelf labeling, signs, or a combination thereof.

The principal routes of exposure were through inhalation.

Proposition 65 requires that notice of intent to sue be given to the violator(s) sixty (60) days before the suit is filed. *Cal. Health & Safety Code § 25249.7(d)(1)*. With this letter, **Blue Water Cosaint, LLC** gives notice of the alleged violation to Violators 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 (plus five (5) calendar days if the place of address is within the State of California or ten (10) calendar days if the place of address is outside of California but within the United States, and twenty (20) calendar days if either the place of mailing or the place of address is outside of the United States), **Blue Water Cosaint, LLC** may file suit. See *Cal. Health & Safety Code § 25249.7(d)(1)*; *Cal. Code Regs. 27 § 25903(d)(1)*; and *Cal. Code Civ. Proc. § 1013*. **Blue Water Cosaint, LLC** remains open to discussing the possibility of resolving its grievances short of formal litigation.

With the copy of this notice submitted to the Violators, a copy of the following is attached: The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary.

Dated: March 13, 2023

George Rikos

George Rikos, Esq.

Attorney for **Blue Water Cosaint, LLC**

Barclays California Code of Regulations

Title 27. Environmental Protection

Division 4. Office of Environmental Health Hazard Assessment

Chapter 1. Safe Drinking Water and Toxic Enforcement Act of 1986

Article 9. Miscellaneous

27 CCR Div. 4 Ch. 1 Art. 9 App. A

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

Currentness

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](#). [FN1] 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 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 say 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 Periods. 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 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 contaminant [FN2] 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.

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.
Revised: May 2017

[FN1]

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>.

[FN2]

See Section 25501(a)(4).

Credits

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](#).

History

1. New Appendix A filed 4-22-97; operative 4-22-97 pursuant to [Government Code section 11343.4\(d\)](#) (Register 97, No. 17).
2. Amendment filed 1-7-2003; operative 2-6-2003 (Register 2003, No. 2).
3. Change without regulatory effect renumbering title 22, section 12903 and Appendix A to title 27, section 25903 and Appendix A, including amendment of appendix, filed 6-18-2008 pursuant to [section 100, title 1, California Code of Regulations](#) (Register 2008, No. 25).
4. Amendment filed 11-19-2012; operative 12-19-2012 (Register 2012, No. 47).
5. Amendment of appendix and Note filed 11-19-2014; operative 1-1-2015 (Register 2014, No. 47).
6. Amendment of Appendix A filed 8-23-2017; operative 10-1-2017 (Register 2017, No. 34).
7. Editorial correction of first paragraph (Register 2019, No. 17).

This database is current through 9/16/22 Register 2022, No. 37.

Cal. Admin. Code tit. 27, Div. 4 Ch. 1 Art. 9 App. A, 27 CA ADC Div. 4 Ch. 1 Art. 9 App. A

ELFBAR BC 5000 Ultra containing Nicotine

CERTIFICATE OF MERIT

Health & Safety Code Section 25249.7(d)

I, George Rikos, hereby declares:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the party(s) identified in the notice(s) has 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. My client, Charles Jamison, has confirmed the products contain the above identified chemicals and the products did not contain a safe harbor warning. It is a listed ingredient on the package.
4. Based on the information obtained, 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 certified, and (2) the facts, studies, or other data reviewed by those persons.

Dated: March 12, 2023

By: George Rikos
George Rikos

CERTIFICATE OF SERVICE

Health & Safety Code Section 25249.7(d)

I am over the age of 18 and not a party to this case. I am a resident of employed in the county where the mailing occurred. My business address is 555 West Beech St., Suite 500, San Diego, California 92101.

ON THE DATE SHOWN BELOW, I CAUSED TO BE SERVED THE FOLLOWING:

- 1) 60-Day Notice of Intent to Sue Under Health & Safety Code Section 25249.6
- 2) Certificate of Merit: Health and Safety Code Section 25249.7(d)
- 3) Certificate of Merit (Attorney General Copy): Factual information sufficient to establish the basis of the certificate of merit (*only sent to Attorney General*)
- 4) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary by enclosing copies of the same in a sealed envelope, along with an unsigned copy of this declaration, addressed to each person shown below and depositing the envelope in the U.S. mail with the postage fully prepaid. Place of Mailing: San Diego, California

Name and address of each party to whom documents were mailed:

Guangdong Fuwo Intelligent Manufacturing Co, LTD
Room 301, Building 12, No. 5
Xinxia Road, Humen Town, Dongguan city,
Guangdong Province, China

IMIRACLE (SHENZHEN) Technology Co, LTD
Room 1203, Block 1, Wanting Building, Xixiang
Substrict, Bao'an District
Shenzhen, China

Smoke Arsenal, Inc.
290 Carlingview Drive
Etobicoke, Ontario, Canada

Cloud 9
200 E. Grand Avenue
Escondido, CA 92025

Name and address of each public prosecutor to whom documents were mailed or emailed¹:

SEE ATTACHED SERVICE LIST

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

Date of Mailing: March 13, 2023 By: George Rikos
George Rikos

¹ Electronic service was issued to those parties who have agreed to electronic service at the email addresses reflected on the attached distribution list.

Distribution List

Alameda County District Attorney CEPDProp65@acgov.org	Los Angeles County District Attorney 210 W. Temple St., 18 th Floor Los Angeles, CA 90012	Mono County District Attorney PO Box 617 Bridgeport CA, 93517
Alpine County District Attorney PO Box 248 Markleeville, CA 96120	Madera County District Attorney 209 W Yosemite Ave Madera, CA 93637	San Joaquin County District Attorney DAConsumer.Environmental@sjcda.org
Amador County District Attorney 708 Court, Suite 202 Jackson, CA 95642	Mariposa County District Attorney mcdam@mariposacounty.org	San Francisco County District Attorney Alexandra.grayner@sfgov.org
Butte County District Attorney 25 County Center Dr. Oroville, CA 95965-3385	Marin County District Attorney 3501 Civic Center Drive, #130 San Rafael, CA 94903	San Diego City Attorney CityAttyCrimProp65@sandiego.gov
Calaveras County District Attorney Prop65Env@co.calaveras.ca.us	Mendocino County District Attorney P.O. Box 1000 Ukiah, CA 95482	San Bernardino County District Attorney 316 N Mountain View Ave San Bernardino, CA 92415-0004
Office of the Attorney General P.O. Box 70550 Oakland, CA 94612-0550	Los Angeles City Attorney 200 N Main St Ste 1800 Los Angeles CA 90012	San Francisco City Attorney Valerie.lopez@sfcityatt.org
Colusa County District Attorney Courthouse, 547 Market St. Colusa, CA 95932	Inyo County District Attorney inyoda@inyocounty.us	Placer County District Attorney Prop65@placer.ca.gov
Contra Costa County District Attorney sgrassini@contracostada.org	Orange County District Attorney PO Box 808 Santa Ana, CA 92702	Merced County District Attorney Prop65@countyofmerced.com
Del Norte County District Attorney 450 "H" St. Crescent City, CA 95531	Nevada County District Attorney DA.Prop65@co.nevada.ca.us	Napa County District Attorney CEPD@countyofnapa.org
El Dorado County District Attorney 515 Main St. Placerville, CA 95667-5697	Plumas County District Attorney Davidhollister@countyofplumas.com	Riverside County District Attorney Prop65@rivcoda.org
Fresno County District Attorney consumerprotection@fresnocountyca.gov	Sacramento County District Attorney Prop65@sacda.org	San Benito County District Attorney 419 4 th St Hollister, CA 95023
Glenn County District Attorney PO Box 430 Willows, CA 95988	San Luis Obispo County District Attorney edobroth@co.slo.ca.us	Siskiyou County District Attorney PO Box 986 Yreka, CA 96097
Humboldt County District Attorney 825 5 th St., 4 th Floor Eureka, CA 95501	San Mateo County District Attorney 400 County Center Redwood City, CA 94063	Solano County District Attorney 600 Union Ave Fairfield, CA 94533
Imperial County District Attorney 939 W. Main St., 2 nd Floor El Centro, CA 92243-2860	Santa Barbara County District Attorney DAProp65@co.santa-barbara.ca.us	Sonoma County District Attorney jbarnes@sonoma-county.org
Kern County District Attorney 1215 Truxtun Ave. Bakersfield, CA 93301	Santa Clara County District Attorney EPU@da.sccgov.org	Shasta County District Attorney 1525 Court St., 3 rd Floor Redding, CA 96001-1632
Kings County District Attorney Gov't Ctr., 1400 W. Lacey Blvd. Hanford, CA 93230	Santa Cruz County District Attorney Prop65DA@santacruzcounty.us	Sierra County District Attorney PO Box 457 Downieville, CA 95936-0457
Lake County District Attorney 255 N. Forbes St. Lakeport, CA 95453-4790	Stanislaus County District Attorney PO Box 442 Modesto, CA 95353	Trinity County District Attorney PO Box 310 Weaverville, CA 96093
Modoc County District Attorney 204 S. Court Street Alturas, CA 96101-4020	Sutter County District Attorney 446 Second Street Yuba City, CA 95991	Yuba County District Attorney 215 5 th St Marysville, CA 95901
San Diego District Attorney SanDiegoDAProp65@sdca.org	Lassen County District Attorney mlatimer@co.lassen.ca.us	Monterey County District Attorney Prop65DA@co.monterey.ca.us
Tuolumne County District Attorney 2 S. Green St Sonora, CA 95370	Tulare County District Attorney Prop65@co.tulare.ca.us	Yolo County District Attorney cfepd@yolocounty.org
Ventura County District Attorney daspecialops@ventura.org	Tehama County District Attorney P.O. Box 519 Red Bluff, CA 96080	San Jose City Attorney 151 W. Mission St. San Jose, CA 95110
Electronically Uploaded to: Office of the Attorney General Proposition 65 Enforcement Reporting Attn: Prop 65 Coordinator https://oag.ca.gov/Prop65/add-60-day-notice		