



Law Office of Crystal Innabi, Esq.

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May 24, 2023

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

DEAR ADIL M. ALSHAIKH, CAMINO RIO, LLC, A.S. INVESTMENT LIMITED CORPORATION d/b/a M & V FOOD MART, THE CALIFORNIA ATTORNEY GENERAL, THE SAN DIEGO DISTRICT ATTORNEY, AND THE SAN DIEGO CITY ATTORNEY¹:

I represent Yousef Innabi (“Claimant”). 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 the violations described below. Claimant hereby 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 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.*

Pursuant to §25249.7 (d) of the statute, Claimant intends to bring an enforcement action sixty (60) days or more after effective service of this Notice unless the appropriate public enforcement agencies have commenced and are diligently prosecuting an action to rectify the violations described herein.

The alleged violator(s) are herein referred to as (“Alleged Violator(s)”) and identified as follows:

NAME OF ALLEGED VIOLATOR(S)	LOCATION(S) OF VIOLATION(S)
ADIL M. ALSHAIKH	915 Camino Del Rio S, San Diego, CA 92108
CAMINO RIO, LLC	915 Camino Del Rio S, San Diego, CA 92108
A.S. INVESTMENT LIMITED CORPORATION d/b/a M & V FOOD MART	915 Camino Del Rio S, San Diego, CA 92108

¹ The specific names of the public enforcement agencies are identified in the attached proof of service.

California's Proposition 65 ("Prop 65") requires businesses to provide a clear and reasonable warning before knowingly and intentionally exposing anyone to a listed chemical, at anticipated exposure levels which pose a significant risk of cancer, birth defects, or other reproductive harm.

The Alleged Violators own and/or operate service stations, located at 915 Camino Del Rio S, San Diego, CA 92108 ("Location(s)"), which sell **Unleaded Gasoline, which is known to the State of California to cause cancer.** In violation of Cal. Health & Safety Code § 25249.6, Alleged Violator(s) exposed and continue to expose patrons, customers or other individuals at the Location(s) to Unleaded Gasoline without first providing the warnings for Service Stations set forth in Title 27 of California Code of Regulations sections 25607.26(a) and 25607.27(a) or otherwise complying with Proposition 65's warning requirements. Without such warnings, individuals, and more specifically 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 Unleaded Gasoline while at the Location(s).

The primary route of exposure to Unleaded Gasoline is through inhalation. People who enter the Location(s) are exposed to Unleaded Gasoline products while at the Location(s), without any of the required warnings required by Proposition 65. Exposures to the Unleaded Gasoline have been occurring at the Location(s) without the clear and reasonable warnings required by Proposition 65, **dating as far back as February 28, 2022,** and will continue every day until clear and reasonable warnings are provided to occupational users or until this known toxic chemical is removed from the Products. This Notice does not allege exposure to the Listed Chemical beyond the Location(s) set forth herein.

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" of the products listed in this Notice is hereby requested to promptly provide the name and contact information for the manufacturer, producer, packager, importer, supplier, and distributor of the unleaded gasoline and petroleum products sold at the Location(s) during since May 12, 2020.

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 chemicals subject to this Notice at the Location(s) and all communications regarding any such exposures. 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—at the Location(s) that the Alleged Violator(s) contends provides consumers with the "clear and reasonable" warning required by Health & Safety Code section 25249.6 regarding the exposures. Alleged Violators are further asked to preserve any historical depictions of such warning materials. The failure to preserve the requested evidence may result in sanctions and other penalties.


Resolution of Claims: Please note that Claimant is represented in connection with this matter and may only be contacted through the undersigned. Pursuant to Cal. Health and Safety Code § 25249.7(d), Claimant intends to bring an enforcement action sixty (60) days or more after

effective service of this Notice unless the appropriate public enforcement agencies have commenced and are diligently prosecuting an action to rectify the violations described herein. 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 the need for prolonged litigation. Should the Alleged Violator(s) be interested in discussing such a resolution, please contact the undersigned at the following phone number, email and/or mailing address:

Crystal Innabi
4502 40th Street, Unit 6, San Diego, CA 92116
cinnabi@innabilegal.com
909-957-8354

A copy of the Proposition 65 summary prepared by the Office of Environmental Health Hazard Assessment is attached, to the copy of this letter served to the Alleged Violator(s) only.

Should you have any questions or concerns, feel free to contact the undersigned.

By: 
Crystal T. Innabi, Esq.

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

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 27001.¹ 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

¹ 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.

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 contaminant² 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.

² 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.

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.

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’s Proposition 65 Implementation Office at (916)445-6900

Certificate of Merit

I, Crystal T. Innabi, 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 this Notice.
- (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: 5/23/2023

By: 
Crystal T. Innabi, 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 San Diego, State of California. I work and/or am employed in the County of San Diego, California. I am over the age of 18 and not a party to this action. My address is 4502 40th Street, Unit 6, San Diego, CA 92116. On May 24, 2023, I caused the following documents to be served to the persons listed in the Service List below:

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

[X] 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.

SERVICE LIST:

A.S. INVESTMENT LIMITED CORPORATION d/b/a M & V FOOD MART
c/o DAVID JARVIS
1011 CAMINO DEL RIO S, STE 210
SAN DIEGO, CA 92108

CAMINO RIO, LLC
c/o DAVID C JARVIS
915 CAMINO DEL RIO S
SAN DIEGO, CA 92108

ADIL M ALSHAIKH
1637 MIRAGE CT
EL CAJON, CA 92019

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **May 24, 2023** in San Diego, California.



Crystal T. Innabi, Esq.

PROOF OF SERVICE
BY ELECTRONIC SERVICE

I declare that I am a citizen of the United States and a resident of the County of San Diego, State of California. I work and/or am employed in the County of San Diego, California. I am over the age of 18 and not a party to this action. My address is 4502 40th Street, Unit 6, San Diego, CA 92116. On May 24, 2023, I caused the following documents to be served to the persons listed in the Service List below:

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


[X] BY EMAIL- by causing a true copy thereof to be electronically transmitted to the parties, by using their email address as indicated on the below Service List.

SERVICE LIST:

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **May 24, 2023** in San Diego, California.



Crystal T. Innabi, Esq.

PROOF OF SERVICE
BY ELECTRONIC UPLOAD

I declare that I am a citizen of the United States and a resident of the County of San Diego, State of California. I work and/or am employed in the County of San Diego, California. I am over the age of 18 and not a party to this action. My address is 4502 40th Street, Unit 6, San Diego, CA 92116. On May 24, 2023, 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;
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 on **May 24, 2023** in San Diego, California.



Crystal T. Innabi, Esq.