

May 31, 2023

The Hempacco Co., Inc.
9925 Airway Road
San Diego, CA, 92154

The Hempacco Co., Inc.
ATTN: James K. Burau
916 Southwood Blvd., Ste. 1A
Incline Village, NV, 89451

Amended 60-Day Notice of Violation:
California Health and Safety Code §25249.5 *et seq.* (Proposition 65)

To Whom it May Concern,

My law office represents Biosphere Watch Group SPC, a California social purpose corporation that seeks to safeguard the public from exposure to harmful chemicals by helping to reduce the prevalence of such toxins, educate about warning requirements, encourage corporate responsibility and create a safe environment for workers and the public.

I am sending this notice on behalf of Biosphere Watch Group SPC acting in the public interest. I have identified the following violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65" or "Prop. 65" or "the Act"), codified at California Health & Safety Code Section 25249.5 *et seq.*, with respect to the products listed below. I hereby send this 60-Day Notice ("Notice") to the alleged violator, The Hempacco Co., Inc., which is a person in the course of business in California ("Violator"); and to the public prosecutors listed in the attached Electronic Distribution List.

The violations covered by this Notice consist of the product exposure, routes of exposure and types of harm potentially resulting from exposure to the hazardous substance(s) identified below, as follows:

Covered Products:	See Exhibit A
Listed Chemicals:	Δ9-THC (Delta-9-Tetrahydrocannabinol), Cannabis/marijuana smoke
Routes of exposure:	Inhalation, ingestion
Types of harm:	Birth defects and other reproductive harm (Δ9-THC); Cancer (Δ9-THC; cannabis/marijuana smoke)

Nature of Alleged Violation (Consumer Product Exposure)

Section 25249.6 of the Act states that “no 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...” The products that are causing consumer exposures to Δ 9-THC (Delta-9-Tetrahydrocannabinol) and Cannabis/marijuana smoke (“Listed Chemicals”) in violation of Proposition 65 which are covered by this notice are hereafter referred to as the “Covered Products.”

The Covered Products do not contain the clear and reasonable Internet warnings required by Proposition 65 and its implementing regulations. See, Title 27, Cal. Code of Regs., Section 25602(b). According to the California Office of Environmental Health Hazard Assessment, in addition to the safe harbor methods under subsection (a), Internet warnings are also required under subsection (b). “Under subsection (b), the business would also need to provide a warning or a clearly marked hyperlink using the word “WARNING” on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the internet purchase.” See *Proposition 65 Clear and Reasonable Warnings: Questions and Answers for Businesses: Internet and Catalog Warnings*, Office of Environmental Health Hazard Assessment, Revised March 2018.¹

Please note that these are only examples of the full range of Covered Products manufactured and/or sold by Violator for which penalties may apply. Exposures to the Listed Chemicals from use of the Covered Products have occurred, and continue to occur, without the “clear and reasonable warning” required by Proposition 65. Such exposures date at least as far back as April 22, 2023 and possibly earlier, beginning when the Covered Products were first sold in California without the appropriate Internet warning.

Without clear and reasonable Internet warnings regarding the potentially harmful effects from exposure to the Listed Chemicals that could result from using the Covered Products, California citizens lack the information they need to make informed decisions regarding how to reduce or eliminate their risk of toxic exposure. Proposition 65 requires that internet sales of the Covered Products also provide the customer with a clear and reasonable warning about the risk of reproductive harm from the Listed Chemicals, even if Violator’s role is limited to that of an online retailer. Violator’s product is sold online with no clear and reasonable warning anywhere on the product page, checkout page, or receipt – in clear violation of this requirement.

¹ https://www.p65warnings.ca.gov/sites/default/files/art_6_business_qa_internet_warnings.pdf

Consumers, including pregnant women of childbearing age, are exposed to the Listed Chemicals when they handle and/or use the Covered Products. Such handling and/or use may take the form of absorption via inhalation through smoking, which is a reasonably foreseeable use of the Covered Products – in fact, they are specifically advertised as “hemp smokables.” The Listed Chemicals can also be transferred to consumers' mouths via hand-to-mouth activities after coming into contact with the Covered Products.

Here, Violator knowingly and intentionally exposed, and continues to expose, consumers within the State of California to the Listed Chemicals without providing on its website the required clear and reasonable Internet warnings that the Covered Products contain the Listed Chemicals. Biosphere Watch Group desires to protect the public by causing Violator to provide sufficiently clear and reasonable warnings (including internet warnings) as required by Proposition 65 if the Covered Products will continue to be sold to California consumers online.

Number and Duration of Violations

Each and every instance where a Covered Product is offered for sale to a customer within the State of California without an appropriate clear and reasonable warning, in the format required by California statute and regulations, constitutes a separate violation of Proposition 65. This includes transactions made in-person, via catalog, over the phone, or over the internet by the recipients of this Notice as well as by any other sellers of the Covered Products. Please note that the Covered Products specifically identified in this Notice are not an exhaustive list of products that violate Proposition 65 and for which a penalty may apply.

The violations in this case are ongoing and will continue to occur until the Covered Products are no longer sold to customers within California, or are sold with an appropriate Internet warning to consumers in California. These violations have been occurring since at least April 22, 2023, as well as every day since the Covered Products were introduced into commerce within California.

Additional Violations of California Law

California Health and Safety Code Section 111921.6 prohibits the sale of smokable hemp products in the State of California, and the manufacture of products for sale within the State of California. Thus, by manufacturing smokable hemp products to be sold within California as well as by selling and shipping smokable hemp products to consumers in California, Violator is in violation of California Health and Safety Code Section 111921.6. These practices also amount

to unfair competition in contravention of California Business and Professions Code Section 17200 *et seq.*

Proposition 65 Information

For general information about the requirements of California's Proposition 65, you may contact the Office of Environmental Health Hazard Assessment's (OEHHA) Proposition 65 Implementation Office at (916) 445-6900. For the Violator's reference, a copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary" prepared by OEHHA is attached.

Resolution of Noticed Claims

Based on the information contained herein and in the Certificate of Merit provided to the Attorney General, Law Firm intends to file a citizen enforcement action on behalf of Biosphere Watch Group against Violator sixty (60) days after effective service of this Notice unless the relevant public enforcement agencies have commenced and are earnestly prosecuting an action against Violator to redress the violations discussed in this Notice; or, unless Violator enters into a binding written agreement that addresses said violations by either recalling any Covered Products which have already been sold or taking steps to provide warnings to consumers who have purchased the Covered Products, adding the appropriate Internet warning to Covered Products that will be sold in the future, paying an appropriate civil penalty, and not selling the Covered Products unless in compliance with all applicable laws and regulations.

If Violator desires to resolve this dispute without resorting to costly and time-consuming litigation, I welcome the opportunity to discuss a potential settlement that serves the public's interest in preventing exposure to toxic chemicals without required Internet warnings. Please direct all such communications to my office at the address below. Settlements can be finalized once the 60-day notice period has elapsed. Please note that any settlement, civil complaint or substantive court orders in this matter must be submitted to the state Attorney General. Neither I nor my client speak for the Attorney General, any district attorney or any of the city attorneys who receive this Notice.

Preservation of Evidence

This Notice serves as a respectful demand to preserve and maintain all relevant evidence pending resolution of this matter. Such relevant evidence includes but is not limited to any information relating to the presence or potential presence of the Listed Chemicals in the Covered Products (such as Certificates of Analysis (COAs) and other laboratory test results); purchase and sales information for any of the Covered Products sold within California; any efforts to comply with Proposition 65 with respect to the Covered Products; communications relating to the presence or potential presence of the Listed Chemicals in Covered Products (such as statements on Violator's packaging and website); and representative exemplars of each specific product falling within the Covered Products. This demand applies to all relevant evidence for Covered Products sold in the State of California, as far back as when the Covered Products were first produced or sold by Violator, through the date of the resolution of the claims alleged in this Notice.

Additional Notice Information

Examples of Covered Products that were recently observed as being available for purchase or use by consumers within the State of California without the required clear and reasonable internet warning, which are covered by this Notice, are identified in Exhibit A. The examples are not an exhaustive list. They are intended to assist Violator in investigating and identifying the extent of the potential exposures to the Listed Chemicals from other items that Violator manufactured, distributed, or sold which are not specifically named here but which fall within the definition of the Covered Products.

In accordance with Title 27, Cal. Code of Regs., Section 25600.2(g), please promptly answer the questions on Exhibit B, and return with receipt confirmation to the mailing and/or email address listed below within fifteen (15) calendar days of receipt of this letter.

Contact Information

Please refrain from contacting my client. Rather, please direct all communications regarding this Notice to my office at the following address, email and/or phone number:

— LAW OFFICES OF —
OMAR FIGUEROA

Law Offices of Omar Figueroa
ATTN: Prop. 65 Division
7770 Healdsburg Avenue
Sebastopol, CA, 95472
707-829-0215
prop65@omarfigueroa.com

Thank you, and I look forward to your prompt response.

Lauren Mendelsohn

Lauren Mendelsohn, Esq.

Attached:

- Exhibit A
- Exhibit B
- Proposition 65 - A Summary
- Certificate of Merit
- Proof of Service

EXHIBIT A

Additional Violations May Also Exist.

Product	Method of Use	Chemicals
Hemp Pre-rolled cigarettes, including but not limited to: <ul style="list-style-type: none">• Hemp Hop Prerolls by Rick Ross (Rozay Flavor)• Hemp Hop Prerolls by Rick Ross (Cookies & Creme Flavor)• Hemp Hop Prerolls by Rick Ross (Strawberry Rozay Flavor)	Smoking	Cannabis (marijuana) smoke, Delta-9-THC

All products can be found at <https://realstuffsmokables.com>.

All products are manufactured and sold by The Hempacco Co. Inc., or its affiliates, and may also be sold by other retailers. See Exhibit B for further information.

EXHIBIT B

As it relates to each of the Covered Products, including but not limited to those identified on Exhibit A, provide the full legal entity name and any known contact information for:

1. Any and all manufacturers
2. Any and all producers
3. Any and all packagers
4. Any and all direct vendors
5. Any and all exporters
6. Any and all shippers
7. Any and all distributors
8. Any and all sellers

Please send the above-requested information to the Law Offices of Omar Figueroa within fifteen (15) calendar days of receipt of this Notice to the mailing and/or email address listed in the Notice. Thank you for your anticipated cooperation.

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.

CERTIFICATE OF MERIT

I, Lauren Mendelsohn, hereby declare:

This Certificate of Merit accompanies the attached initial sixty-day notice in which it is alleged that the parties identified in the notice have violated Health and Safety Code §25249.6 by failing to provide clear and reasonable warnings.

I am the attorney for the noticing party.

I have consulted with one or more persons with relevant and appropriate experience or expertise who has/have reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the subject of this action and/or the listed chemical in substantially similar products and exposes individuals through the same potential routes.

Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that “reasonable and meritorious case for the private action” means that the information provides a credible basis that all elements of the plaintiff’s case can be established and the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.

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 under Health and Safety Code §25249.7(h)(2) including (i) the identity of the persons consulted with and relied on by the certifier, and (ii) certain facts, studies, or other data reviewed by those persons.

Dated: May 31, 2023

Lauren Mendelsohn

Lauren Mendelsohn Esq.

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury:

I am over the age of 18 years and not a party to the within action. I am a resident or employed in the county where the mailing occurred. My business address is 7770 Healdsburg Avenue, Sebastopol, California, 95472.

On the date below, I caused to be served the following documents:

AMENDED SIXTY-DAY NOTICE OF VIOLATION OF HEALTH & SAFETY CODE § 25249.5 ET. SEQ. (PROPOSITION 65); CERTIFICATE OF MERIT; THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY; PROOF OF SERVICE; ELECTRONIC DISTRIBUTION LIST

By First Class Certified Mail, Return Receipt through the U.S. Postal Service by placing true and correct copies of the above documents in a sealed envelope, addressed to each alleged violator listed below and providing such envelope to a U.S. Postal Service Representative.

The Hempacco Co., Inc.
9925 Airway Road
San Diego, CA, 92154

The Hempacco Co., Inc.
ATTN: James K. Burau
916 Southwood Blvd., Ste. 1A
Incline Village, NV, 89451

By Electronic Mail by causing true and correct electronic copies of the above documents to be e-mailed to public prosecutors on the attached "Electronic Distribution List."

By Electronic Upload by causing true and correct copies of the above documents (and additional Factual Information in Support of Certificate of Merit) to be uploaded to the California Attorney General's website at the web address below.

Office of the California Attorney General
Proposition 65 Enforcement Reporting
ATTN: Prop 65 Coordinator
<https://oag.ca.gov/prop65/add-60-day-notice>

Executed on May 31, 2023 at Sebastopol, California.

Lauren Mendelsohn

Lauren Mendelsohn, Esq.

Proposition 65 Public Prosecutors: Electronic Distribution List

Alameda County District Attorney CEPDPProp65@acgov.org	San Diego District Attorney SanDiegoDAProp65@sdcda.org
Calaveras County District Attorney Prop65Env@co.calaveras.ca.us	San Diego City Attorney CityAttyProp65@sandiego.gov
Contra Costa County District Attorney sgrassini@contracostada.org	San Francisco District Attorney alexandra.grayner@sfgov.org
Fresno County District Attorney consumerprotection@fresnocountyca.gov	San Francisco City Attorney Prop65@sfcityatty.org
Inyo County District Attorney inyoda@inyocounty.us	San Joaquin County District Attorney DAConsumer.Environmental@sjcda.org
Lassen County District Attorney mlatimer@co.lassen.ca.us	San Luis Obispo County District Attorney edobroth@co.slo.ca.us
Mariposa County District Attorney mcda@mariposacounty.org	Santa Barbara County District Attorney DAProp65@co.santa-barbara.ca.us
Merced County District Attorney Prop65@countyofmerced.com	Santa Clara County District Attorney EPU@da.sccgov.org
Monterey County District Attorney Prop65DA@co.monterey.ca.us	San Jose City Attorney Proposition65notices@sanjoseca.gov
Napa County District Attorney CEPD@countyofnapa.org	Santa Cruz County District Attorney Prop65DA@santacruzcounty.us
Nevada County District Attorney DA.Prop65@co.nevada.ca.us	Sonoma County District Attorney Jeannie.Barnes@sonoma-county.org
Placer County District Attorney Prop65@placer.ca.gov	Tulare County District Attorney Prop65@co.tulare.ca.us
Plumas County District Attorney Davidhollister@countyofplumas.com	Ventura County District Attorney daspecialops@ventura.org
Riverside County District Attorney Prop65@rivcoda.org	Yolo County District Attorney cfepd@yolocounty.org
Sacramento County District Attorney Prop65@sacda.org	

<https://oag.ca.gov/prop65/electronic-service>