

DOVEL & LUNER

201 Santa Monica Blvd., Suite 600 Santa Monica, California 90401 TEL 310.656.7066 FAX 310.656.7069

July 24, 2023

SmartyPants, Inc. 4056 Del Rey Avenue, Suite A Marina Del Rey, CA 90292

SmartyPants, Inc. 1505 Corporation C T CORPORATION SYSTEM 330 N Brand Blvd. Glendale, CA 91203

Via USPS First Class, Certified Mail

Re: Notice of Violation of California Health & Safety Code Section 25249.6

To Whom It May Concern:

This letter serves as notification that Dannette Sanders intends to bring suit for, among other claims, violations of California Health and Safety Code 25249.6 ("Proposition 65").

Alleged violator: SmartyPants, Inc.

<u>Approximate time period</u>: On November 28, 2022, Ms. Sanders purchased a bottle of SmartyPants Organics Prenatal Formula Multivitamins. The product has been on sale for at least four years and is currently available for sale.

<u>Chemicals:</u> The violations involve exposure to lead from the products listed below. The State of California has officially listed lead as a chemical known to cause cancer and reproductive harm.¹

Consumer Products: SmartyPants Organics Prenatal Formula Multivitamins

<u>Route of exposure:</u> Ingestion. Ingestion of the product identified results in human exposure to lead. No clear and reasonable warning is provided with the products regarding the risk of cancer or reproductive harm.

¹ http://oehha.ca.gov/prop65/prop65_list/Newlist.html

A certificate of merit is attached.

Please direct all questions concerning this notice of violation to:

Christin Cho c/o Dovel & Luner 201 Santa Monica Blvd., Suite 600 Santa Monica, California 90401 (310) 656-7066 christin@dovel.com

Sincerely,

Christin Cho

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Attachments:

- Certificate of Merit
- Certificate of Service
- Appendix A: THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY
- Certificate of Merit (Attorney General Copy); Factual information sufficient to establish basis of the certificate of merit (only sent to Attorney General)

Certificate of Merit

Health and Safety Code Section 25249.7(d)

I, Christin Cho, declare:

- 1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that SmartyPants, Inc. has violated Health and Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
 - 2. I am an 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 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.
- 4. 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 & Safety Code 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.
- 5. I declare, under penalty of perjury under the laws of the United States, that the foregoing is true and correct.

Dated: July 24, 2023

Christin Cho

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.

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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.



Christin Cho
201 Santa Monica Blvd.,
Suite 600
Santa Monica,
California 90401
TEL 310.656.7066
christin@dovel.com

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States and over the age of 18 years of age. My business address is 201 Santa Monica Blvd., Ste. 600, Santa Monica, CA 90401. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Santa Monica, California.

On July 24, 2023, between 8:00 a.m. and 5:00 p.m. Pacific Standard Time, I verified the following documents: Notice Of Violations, California Health & Safety Code §25249.5 et seq.; Certificate Of Merit Including A Summary Of Confidential Factual Information; Additional Supporting Information For Certificate Of Merit As Required By California Health & Safety Code §25249.7(d)(1) were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at https://oag.ca.gov/prop65/add-60-day-notice:

Office of the California Attorney General Prop 65 Enforcement Reporting 1515 Clay Street, Suite 2000 Oakland, CA 94612-0550

On July 24, 2023, between 8:00 a.m. and 5:00 p.m. Pacific Standard Time, I verified the following documents: Notice of Violations; California Health & Safety Code §25249.5 Et Seq; Certificate of Merit were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Email Service List

Pamela Y. Price, District Attorney	Allison Haley, District Attorney	Tori Verber Salazar, District Attorney
ALAMEDA COUNTY	NAPA COUNTY	SAN JOAQUIN COUNTY
7776 Oakport Street, Suite 650	1127 First Street, Suite C	222 E. Weber Avenue, Room 202
Oakland, CA 94621	Napa, CA 94559	Stockton, CA 95202
CEPDProp65@acgov.org	CEPD@countyofnapa.org	DAConsumer.Environmental@sjcda.org
Barbara Yook, District Attorney	Clifford H. Newell, District Attorney	Eric J. Dobroth, Deputy District
CALAVERAS COUNTY	NEVADA COUNTY	Attorney
891 Mountain Ranch Rd.	201 Commercial Street	SAN LUIS OBISPO COUNTY
San Andreas, CA 95249	Nevada City, CA 95959	County Government Center Annex, 4th
Phone: 209-754-6330	DA.Prop65@co.nevada.ca.us	Floor
Prop65Env@co.calaveras.ca.us		San Luis Obispo, CA 93408
		Phone: 805-781-5800
		edobroth@co.slo.ca.us
Stacey Grassini, Deputy District Attorney	Morgan Briggs Gire, District	Christopher Dalbey, Deputy District
CONTRA COSTA COUNTY	Attorney	Attorney
900 Ward Street	PLACER COUNTY	SANTA BARBARA COUNTY
Martinez, CA 94553	10810 Justice Center Drive	1112 Santa Barbara St.
sgrassini@contracostada.org	Roseville, CA 95678	Santa Barbara, CA 93101

	Phone: 916-543-8000	Phone: 805-568-2300
	prop65@placer.ca.gov	DAProp65@co.santa-barbara.ca.us
Lisa A. Smittcamp, District Attorney	David Hollister, District Attorney	Bud Porter, Supervising Deputy District
FRESNO COUNTY	PLUMAS COUNTY	Attorney
2100 Tulare Street	520 Main St.	SANTA CLARA COUNTY
Fresno, CA 93721	Quincy, CA 95971	70 W Heeding St
Phone: (559) 600-3141	Phone: (530) 283-6303	San Jose, CA 95110
consumerprotection@fresnocountyca.gov	davidhollister@countyofplumas.com	EPU@da.sccgov.org
Thomas L. Hardy, District Attorney	Paul E. Zellerbach, District Attorney	Nora V. Frimann, City Attorney
INYO COUNTY	1	SAN JOSE COUNTY
	RIVERSIDE COUNTY	
168 North Edwards Street	3072 Orange Street	200 E. Santa Clara Street, 16th Floor
Independence, CA 93526	Riverside, CA 92501	San Jose, CA 96113
Phone: 760.878.0282	Prop65@rivcoda.org	Proposition65notices@sanjoseca.gov
inyoda@inyocounty.us		I co a B II Bi i i i i i
Michelle Latimer, Program Coordinator	Anne Marie Schubert, District	Jeffrey S. Rosell, District Attorney
LASSEN COUNTY	Attorney	SANTA CRUZ COUNTY
220 S. Lassen Street	SACRAMENTO COUNTY	701 Ocean Street
Susanville, CA 96130	901 G Street	Santa Cruz, CA 95060
Phone: 530-251-8284	Sacramento, CA 95814	Phone: 831-454-2400
mlatimer@co.lassen.ca.us	Prop65@sacda.org	Prop65DA@santacruzcounty.us
Walter W. Wall, District Attorney	Summer Stephan, District Attorney	Jill Ravitch, District Attorney
MARIPOSA COUNTY	SAN DIEGO COUNTY	SONOMA COUNTY
P.O. Box 730	330 West Broadway	600 Administration Drive
Mariposa, CA 95338	San Diego, CA 92101	Santa Rosa, CA 95403
Phone: (209) 966-3626	SanDiegoDAProp65@sdcda.org	Jeannie.Barnes@sonoma-county.org
mcda@mariposacounty.org		
Kimberly Lewis, District Attorney	Mark Ankcorn, Deputy City	Phillip J. Cline, District Attorney
MERCED COUNTY	Attorney	TULARE COUNTY
550 West Main Street	SAN DIEGO	221 S Mooney Blvd
Merced, CA 95340	1200 Third Avenue	Visalia, CA 95370
Phone: (209) 385-7381	San Diego, CA 92101	Prop65@co.tulare.ca.us
Prop65@countyofmerced.com	CityAttyProp65@sandiego.gov	
Jeannine M. Pacioni, District Attorney	Alexandra Grayner, Assistant	Gregory D. Totten, District Attorney
MONTEREY COUNTY	District Attorney	VENTURA COUNTY
1200 Aguajito Road	SAN FRANCISCO COUNTY	800 S Victoria Ave
Monterey, CA 93940	350 Rhode Island Street	Ventura, CA 93009
Prop65DA@co.monterey.ca.us	San Francisco, CA 94103	daspecialops@ventura.org
<u>-</u>	alexandra.grayner@sfgov.org	
Henry Lifton, Deputy City Attorney	Jeff W. Reisig,	
SAN FRANCISCO	District Attorney	
1390 Market Street, 7th Floor	YOLO COUNTY	
San Francisco, CA 94102	301 Second Street	
Prop65@sfcityatty.org	Woodland, CA 95695	
	cfepd@volocounty.org	

Christin Cho

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States and over the age of 18 years of age. My business address is 201 Santa Monica Blvd., Ste. 600, Santa Monica, CA 90401. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Santa Monica, California.

On July 24, 2023 between 8:00 a.m. and 5:00 p.m. Pacific Standard Time, I served the following documents: Notice of Violation of California Health & Safety Code §25249.5 et seq.; Certificate Of Merit; "The Safe Drinking Water And Toxic Enforcement Act Of 1986 (Proposition 65): A Summary" on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

SmartyPants, Inc. 4056 Del Rey Avenue, Suite A Marina Del Rey, CA 90292

On July 24, 2023, between 8:00 a.m. and 5:00 p.m. Pacific Standard Time, I served the following documents: Notice of Violation, California Health & Safety Code §25249.5 et. seq.; Certificate of Merit on each party on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, in the mail at Santa Monica, California with the postage fully prepaid for delivery by First Class Mail.

Executed on July 24, 2023, in Santa Monica, California.

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Service List

Robert Priscaro, District Attorney ALPINE COUNTY P.O. Box 248 Markleeville, CA 96120 Phone: (530) 694-2971 Fax: (530) 694-2980	Sarah Hacker, District Attorney KINGS COUNTY 1400 West Lacey Blvd. Hanford, CA 93230 Phone: (559) 582-0326 Fax: (559) 584- 9630	Jason Anderson, District Attorney SAN BERNARDINO COUNTY 303 W. Third Street San Bernardino, CA 92415 Phone: (909) 382-3800 Fax: (909) 382-7674
Todd Riebe, District Attorney AMADOR COUNTY 708 Court Street, #202 Jackson, CA 95642 Phone: (209) 223-6444 Fax: (209) 223-6304	Susan Krones, District Attorney LAKE COUNTY 255 N. Forbes Street Lakeport, CA 95453 Phone: (707) 263-2251 Fax: (707) 263-2328	Stephen M. Wagstaffe, District Attorney SAN MATEO COUNTY 400 County Center, Third Floor Redwood City, CA 94063 Phone: (650) 363-4636 Fax: (650) 363- 4873
Michael L. Ramsey, District Attorney BUTTE COUNTY 25 County Center Drive — Administration Building Oroville, CA 95965 Phone: (530) 538-7411 Fax: (530) 538-7071	Hydee Feldstein Soto, City Attorney LOS ANGELES 200 N Main St. #800 Los Angeles, CA 90012 (213) 978-8100	Stephanie A. Bridgett, District Attorney SHASTA COUNTY 1355 West Street Redding, CA 96001 Phone: (530) 245-6300 Fax: (530) 245-6334
Brenden Farrell, District Attorney COLUSA COUNTY 310 6th Street Colusa, CA 95932 Phone: (530) 458-0545 Fax: (530) 458- 0518	George Gascon, District Attorney LOS ANGELES COUNTY 211 W. Temple Street, Suite 1200 Los Angeles, CA 90012 Phone: (213) 974-3501 Fax: (213) 974- 1484	Sandra Groven, District Attorney SIERRA COUNTY 100 Courthouse Square Downieville, CA 95936 Phone: (530) 289-3269 Fax: (530) 289- 2822

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Cassandra Jenecke, District Attorney TUOLUMNE COUNTY 423 N. Washington Street Sonora, CA 95370 Phone: (209) 588-5450 Fax: (209) 588- 5445		