LAW OFFICES

BRODSKY SMITH

9595 WILSHIRE BLVD., STE. 900 BEVERLY HILLS, CA 90212 877.534,2590 www.brodskysmith.com

NEW JERSEY OFFICE 1310 NORTH KINGS HIGHWAY CHERRY HILL, NJ 08934 856.795.7250 NEW YORK OFFICE 240 MINEOLA BOULEVARD MINEOLA, NY 11501 516.741.4977 PENNSYLVANIA OFFICE TWO BALA PLAZA, STE. 805 BALA CYNWYD, PA 19004 610.667.6200

November 3, 2023

President/CEO	President/CEO
1616 Holdings, Inc.	1616 Holdings, Inc.
701 Market Street, Suite 300	c/o CSC-Lawyers Incorporating Service
Philadelphia, PA 19106	2710 Gateway Oaks Drive, Suite 150N
	Sacramento, CA 95833
President/CEO	President/CEO
Five Below, Inc.	Five Below, Inc.
c/o CSC-Lawyers Incorporating Service	1818 Market Street, Suite 2000
2710 Gateway Oaks drive, Suite 150N	Philadelphia, PA 19103
Sacramento, CA 95833	

60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act1

To Whom It May Concern:

This Notice of Violation (the "Notice") is provided to you pursuant to and in compliance with California Health & Safety Code \S 25249.7(d).

Brodsky Smith represents Ema Bell ("Bell"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals from use of consumer products sold in California and to improve human health and the environment by reducing hazardous substances.

With respect to the Product herein, Bell has identified a 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. This violation has occurred and continues to occur because the alleged Violator(s) failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in California. Health & Safety Code § 25249.6 provides 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 providing a clear and reasonable warning to such individual ..." Without proper warnings regarding the toxic effects of exposures to the Listed Chemical resulting from use of the Product, California citizens lack the information necessary to make informed decisions on whether and/or how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

¹ The public enforcement agencies that have been served with copies of this Notice are identified in the attached distribution list accompanying the Certificate of Service.

I. <u>DESCRIPTION OF THE VIOLATION</u>

- Enforcer: Ema Bell, 222 S. Figueroa St. Apt. 1212, Los Angeles, CA 90012-2581; (Ph) 424-332-3817.
- 2. Alleged Violator(s): 1616 Holdings, Inc.; Five Below, Inc.
- 3. Time Period of Exposure: Violations have been occurring since at least November 3, 2023 and are continuing to this day.
- **4. Listed Chemical**: Lead. Lead is listed under Proposition 65 as a chemical known to the State to cause cancer and birth defects or other reproductive harm.

5. Product:

Product ²	Non- Exclusive Examples of the Product
Sushi Set	Make Your Own Sushi Set
	UPC# 1922342814017

6. Description of Exposure: The exposures that are the subject of this Notice result from the purchase, acquisition, handling and recommended use of the Product. The primary route of exposure to the Listed Chemical is through dermal absorption directly through the skin when consumers use, touch, or handle the Products. Some amount of exposure through ingestion can occur by touching the Product with subsequent touching of the user's hand to mouth. No clear and reasonable warning is provided with the Products regarding the health hazards of exposure to the Listed Chemical.

II. PROPOSITION 65 INFORMATION

For the Violators' reference, enclosed is a copy of "Proposition 65: A Summary" that has been prepared by the Office of Environmental Health Hazard Assessment ("OEHHA"). For more information concerning the provisions of Proposition 65, contact OEHHA at 916.445.6900.

III. RESOLUTION OF THE CLAIMS

Based on the allegations set forth in this Notice, Brodsky Smith intends to file a citizen enforcement lawsuit on behalf of Bell against the alleged Violator(s) unless such Violator(s) agree in a binding written agreement to: (1) recall Products already sold; (2) provide Proposition 65 compliant exposure warnings for Products sold in the future or reformulate the Products to eliminate exposures to the Listed Chemical; and (3) pay an appropriate civil penalty based on the factors enumerated in Health & Safety Code § 25249.7(b). Consistent with the public interest goals of Proposition 65 and the desire to have these violations of California law quickly rectified, Bell is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

² The specifically identified example of the Product in this Notice is to assist the recipients' investigation of, among other things, the magnitude of potential exposures to the Listed Chemical from other items within the definition of Products. This example is not intended to be an exhaustive or comprehensive identification of each specific offending Product. It is Bell's position that the alleged Violators are obligated to conduct a good faith investigation into other Products that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violators' custody or control) during the relevant period to ensure that requisite health hazard warnings were and are provided to California citizens prior to purchase and use.

Bell has retained me as legal counsel in connection with this Notice. Please direct all communications regarding this Notice to my attention at Brodsky Smith, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212, (877) 534-2590, esmith@brodskysmith.com.

Sincerely,

Evan J. Smith

Attachments

Certificate of Merit Certificate of Service The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary

CERTIFICATE OF MERIT

Health & Safety Code Section 25249.7(d)

I, Evan J. Smith, hereby declare:

- (1) This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice have violated Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
- (2) I am the attorney for the noticing party, Ema Bell.
- 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 chemicals that are the subject of the action.
- (4) Based on the information obtained through these 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 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(s) 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 information identified in Health & 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: November 3, 2023

Evan J. Smith Attorney for Ema Bell

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, over the age of 18 years of age, and am not a party to the within action. My business address is 2 Bala Plaza, Suite 805, Bala Cynwyd, Pennsylvania. I am employed in Montgomery County where the mailing occurred.

On November 3, 2023 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 Action of 1986 (Proposition 65): A Summary on the following entities and individuals listed below by placing a true and correct copy thereof in a sealed envelope, addressed to the person or entity listed below and depositing it in a US Postal Service Office with postage fully prepaid for delivery by Certified Mail:

President/CEO	President/CEO
1616 Holdings, Inc.	1616 Holdings, Inc.
701 Market Street, Suite 300	c/o CSC-Lawyers Incorporating Service
Philadelphia, PA 19106	2710 Gateway Oaks Drive, Suite 150N
	Sacramento, CA 95833
President/CEO	President/CEO
Five Below, Inc.	Five Below, Inc.
c/o CSC-Lawyers Incorporating Service	1818 Market Street, Suite 2000
2710 Gateway Oaks drive, Suite 150N	Philadelphia, PA 19103
Sacramento, CA 95833	

On November 3, 2023, 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 Action of 1986 (Proposition 65): A Summary on each of the individuals on the service list attached hereto as Appendix B by placing a true and correct copy thereof in a sealed envelope, addressed to the person or entity listed below and depositing it in a US Postal Service Office with postage fully prepaid for delivery by Priority Mail.

Executed November 3, 2023, in Bala Cynwyd, Pennsylvania.

Evan J. Smith

Mameda County District Attorney	The Renerable Toxi Verher Salzar San Josquin County District Automay	Honorable Anne Marie Schubert Sacramento County District Attorney
CONTROL Street Strike 650	222 L. Weber Avolute, Rooms 202	901 G Street
Oakland, CA 94621	Strucktem, CA \$5202	Sacramento, CA 95814
CEPDP mp65@acgiv.org	DAConsulter Envisonemental@sjodn.org	Prop65@sectin.org
The Honorable Allison Haley	The Honorable Jeffrey 3. Rosell	The Honorable Summer Stephan
Napa County District Attorney 1127 First St., Suite C	Santa Cruz County District Attorney	San Diego County District Attenuey
Napa, CA 94559	201 Ocean Street	B00 West Broadway
CEPO - 94359	Sunti Cruz, CA 95060	San Diego, CA 92101
CEPD@countyofnapa.org	Proph5DA@santagerzecounty.us	SanDiegoDAProp65@sdcda.org
The Honorable Jeff W. Reisig	Michella Latimer, Program Coordinator	
Yolo County District Attorney	Lassen County	Mark Ankcorn, Deputy City Attorney
Pol Second Street	220 S. Lassen Street	City of San Diego
Woodland, CA 95695		1200 Third Avenue
Estadia volecounty ore	Susagville, CA 96130	San Diego, CA 92101
Bud Porter	polatimes@co.juseen.co.us	CityAstyPron65@sandiego.gov
Supervising Deputy District Attorney	Aleihea M. Sargent	Christopher Dalbey,
Santa Clara County		Deputy District Attorney
70 W Hadding Street	San Francisco District Attorney's Office	Santa Barbara County
San Jose, CA 95110	350 Rhode Island Street	1112 Santa Barbara, Street
PPI Man	San Francisco, CA 94103	Santa Barbura, CA 93101
EPU@da.scogov.org	Blothen sargent@sfevey.osa	DAProp63@co.santa-barbara.ca.us
The Honorable Gregory D. Totten,	The Honorable Barbara Yook	Valerie Lopez, Deputy City Attorney
IN COURTY District Assom	Calmeras County District Attorney	Office of the City Attorney
800 S Victoria Avenue	891 Mountain Ranch Road	
Ventura, CA 93009	San Andreas, CA 95249	1390 Market Street, 7th Flour
daspecialons@ventura.org	Brondson of	San Francisco, CA 94102
otacey Grassini	Propose ny Oso, cataveras, ca. us	Valerie, Lopez@afcityatty.org
Deputy District Attorney	Brie J. Dobroth	Jeannine M. Pacioni
Contra Costa County	Denny District Attorney	Denuty District Attorney
900 Ward Street	San Luis Obispo County	Monterey County
Martinez, CA 94553	County Govt Center Annex, 4th Floor	1200 Aguajito Road
E assini@contracostada.org	pas Luis Obispo, CA 93408	Monterey, CA 93940
Fire Homorald TI	edobrothiaco sto.ca, us	PrepéSDA@co.montercy.cs.us
The Honorable Thomas Hardy	The Philip I. Office	The Honorable Clifford Newell
Hyle County District Attorney	Tolore County District Asterney	Nevada County District Attorney
68 M. Edwards Street	231 S Mooney Blwd	
ndepartience, CA 93526	Visalia, CA 95370	201 Commercial Street
TYDGS(S) IN VECOUNTY INC	Feopos Reo Juliane, co. us	Nevada City, CA 95959
ne Honorable Paul F. Zallerhach	Meaponter Causant Co. HS	DA.Pmp65@co.nevadu.ca.us
Proceside County District A tramer	The Honorable Stephan Passalacqua	The Honorable David Hollister
VISIDE STEPP	Saturna County District Attorney	Plumas County District Attorney
iverside CA 92501	586 Administration Drive	520 Main Street, Room, 404
sund5@rivcoda.org	Sonome, CA 95403	Quincy, CA 9597 I
te Honoval III	досупное-выподот	davidicollister@sountyofelumus.com
te Honorable Walter W. Wall	The Manomble Kingherly Lewis	The Honorable Morgan Briggs Circ
ariposa County District Attorney	Morard County District Attorney	
U BOX /30	550 West Main Street	Placer County District Attorney
ariposa, CA 95338	Transact Eld area on	10810 Justice Conter Drive
1918@minringsmansary over	Mercud, CA 95346	Roseville, CA 95678
ora V. Frimano, City Attorney	Proposition of the Proposition o	prop65@placer.ca,gov
IN E Santa Classics Attorney	Lisa A. Smilleann, District Attorney	
10 E. Santa Clara Street, 16th Floor	2100 Tulare Street	
MIJOSE, CA 96113	Fresno, CA 93721	4
regesition65notices@sanjeseca.gov	The state of the s	
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ELECTRONIC UPLOAD SERVICE LIST

Office of the California Attorney General
Proposition 65 Enforcement Reporting
ATTN: Prop 65 Coordinator
P.O. Box 70550
Oakland, CA 94612-0550
https://oag.ca.gov/prop65/add-60-day-notice

SERVICE LIST

The body with Name Ott Co.	To the second second		
The Monorable Namey O'Mallary Alamada Caunty Olstrict Attorney 1225 Fallon Street, Room 900 Gakland, CA 94612	The Honorable Stedey Montgomery Lassen County Olstrict Attorney 220 South Lassen Street, Ste. 8 Susanville, CA 98130	The Handrable Candide Hooper San Benito County District Altorney 419 4th Street, Second Floor Hollister, CA 95203	The Honorable Gragg Cohen Tahama County District Attorney 444 Oak Street, Room L Rad Bluff, CA 96080
The Hencrable Terese Orabec			
Alpine County District Attorney	The Honorable Jackie Lacey	The Honorable Michael Ramos	The Henorable Eric Herylard
47V Laramia Street RO BOY 240	Los Angales County District Attorney	San demarding County District Attorney	Trinity County District Attorney
Markleeville, CA 96120	21 West Temple Street, Suite 1200 Los Angeles, CA 90012	303 West 3rd Street, 6th Floor Sen Bernardino, CA 92415-0502	P.O. Box 310 Weaverville, CA 96093
The Honorabie Todd Slebe	1 The United States		
Amader County District Atlorney	The Honorable David Linn Madera County Olstriot Attorney	The Honorable Bonnie Dumanis	The Honorable Tim Ward
708 Court Street	209 West Yosemite Avenue	San Olego County District Attorney	Tulare County District Altomey 221 South Mooney Soulevard, Rm 224
Jackson, CA 96642	Madera, CA 98697	330 W. Broadway Street	Visalia, CA 93291-4593
The Honoroble Hilotopic Providence	The Hondrable Soverof Berbeslan	San Diego, CA 92101	
Notice Committee and	Marin County District Attorney	The Honorable George Gascon	The Honorable Caura Kileg Tuglymne County District Altorney
20 County Center Orline	3501 Civic Center Orive, Room 130	San Francisco County District Attorney	423 North Washington Street
Oroville, CA 95965	San Raigel, CA 94909	850 Bryant Street, Room 322 San Francisco, CA 94103	Sonora, CA 95370
The Honorable Sarbera Yook	The Honorable Thomas Cooke	The Honorable Tori Verber Salazar	The Henerable Gregory Tolten
Udiaveres County Diatrice Assess	Mariposa County District Attorney	San Joaquin County District Afterney	Ventura County District Attorney
og i woutheld Hands Board	5101 Jones Street, P.O. Box 730	222 East Weber Avenue, Hoom 202	800 South Victoria Avenue
San Andreas, CA 95249	Marinosa, CA 96338	Stackton, CA 95201	Ventura, CA 93009
The Honorable John Poyner	The Hanorable C. Cauld Firster	The Honorable Can Dow	The Hangrable Jelf Reisig
Colusa County District Attorney	Mendacing County District Attornay	San Luis Obispo County District Alty	Yala County District Altomey
346 Fifth Street	100 North State Street, P.O. Sox 1000	1035 Palm Street, 4th Floor	301 Second Street
Colusa, CA 95932	J Uklah, CA 95482	San Luis Obisso, CA 93408	Woodland, CA 35995
The Honorable Mark Peterson	The Honorable Larry Worse II	The Honorable Stephen Wagstaffe	The Honorable Patrick McGrain
Contra Costa County District Attorney 300 Ward Street	Werded County District Alternay	San Maleo County District Attorney	Yuba County District Attorney
darlinez. CA 94553	1 550 W. Main Street	400 Caunty Center, Third Floor	215 Fifth Sireel
ha december OA 94553	Merced, CA 95340	Redwood City, CA 94069	Marysville, CA 95901
ha Honorable Dale Trigg	The Honorable Jordan Funk	The Hongrable Joyce Oudley	The Honorable Mike Feuer
Del Marte County District Attorney 50 H Steet, Room 171	Modec County District Attorney	Santa Barbara County District Attorney	Office of the City Attorney, Las Angeles
Presonnt City, CA 95531	204 S. Court Street, Suite 202	1112 Santa Barbara Street	800 City Hall East
wit 30001	Alturas, CA 96101	Santa Barbara, CA 93101	200 North Main Street
he Honorable Vern Plerson	1		Las Angeles, CA 99012
Devado County District Attorney	The Honorable Tim Kendall	The Rongrable Jeffray Rosen	The Honmable James Sanchez
	Mono County District Attorney	Santa Clara County District Attorney	Office of the City Attorney, Sacramento
lacerville, CA 95667	P.O. Bex 617	70 West Hedding Street, West Wing	915 I Sirest, 4th Floor
he Handrable Like Smitteamp	Bridgeport, CA 93517	San Jose, CA 95110	Sacramento, CA 95614
resno County District Attorney	The Honorable Oran Flippo	The Honorable Jeff Rosell	The Fonerable Jan Goldsmith
220 Tulara Sheet, #1000	Monterey County District Altorney	Santa Cruz County District Attorney	Office of the City Attomey, San Diego
CESTO. CA 93721	P.O. 8ex 1191	701 Ocean Street, Room 200	1200 Third Avenue, Suite 1620
he Honorith h	Salinas, CA 93902	Santa Cruz, CA 95060	San Diego, CA 92101
he Honerante Owayne Stewart Idenn County District Attorney	The Honorable Allison Haley	The Honorable Stephen Carlton	The Honorable Dennis Herrera
O. Box 490	Napa County District Attorney	Shasta County District Attorney	Office of the City Attorney, San
/Illows, CA 95988	1127 First Street, Suite C	1355 West Sireet	Francisco
		Redding, CA 95001	
	Naps, CA 34559		1 Or. Carlton 8. Goodlek Place
tig Managaraha Managarah			San Francisco, CA 94102
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ne Hongrable Maggle Fleming	The Honorable Clifford Newell Nevada County District Attorney	The Honorable Lawrence Allen Slene County District Attorney	San Francisco, CA 94102 The Honorable Righard Doyle Office of the City Altomey, San Jose
ne Hongrable Maggle Fleming Unitrollet Caunty District Attorney 25 31h Steett, Flauth Flaor Unite: CA 95501	The Honorable Clifford Newell Nevada County District Attorney 201 Commercial Street	The Honorable Lawrence Allen	San Francisco, CA 94102 The Honorable Richard Dayle Office of the City Altomey, San Jose 200 East Santa Clara Street,16th Floor
he Hongrable Magdie Flexning Unstiglet County District Attorney 25 3th Street, Fourth Fleor Lucke, CA 95501	The Honorable Clifford Newell Nevada County Clistilat Attorney 201 Commercial Street Nevada City, CA 95959	The Honorable Lawrence Allen Slena County District Attorney	San Francisco, CA 94102 The Honorable Richard Doyle Office of the City Allomey, San Jose 200 East Santa Clara Street, 19th Floor San Jose, CA 95113
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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

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 employe 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 B

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): SPECIAL COMPLIANCE PROCEDURE

This Appendix B contains the notice of special compliance procedure and proof of compliance form 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"). Under the Act, a private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. These exposures are:

- 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.

A private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties any reimbursement for costs and attorney's fees, if the alleged violator has done all of the following within 14 days of being served notice:

- Corrected the alleged violation;
- Agreed to pay a civil penalty of \$500 (subject to change in 2019 and every five years thereafter) to the private party within 30 days; and

Notified the private party serving the notice in writing that the violation has been corrected.

An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city of greater than 750,000 population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator.

When a private party sends a notice of alleged violation that alleges one or more of the exposures listed above, the notice must include a notice of special compliance procedure, and a proof of compliance form to be completed by the alleged violator as directed in the notice.

The notice and proof of compliance form is reproduced here:

Date:

Page 1

Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

SPECIAL COMPLIANCE PROCEDURE PROOF OF COMPLIANCE

You are receiving this form because the Noticing Party listed above has alleged that you are violating California Health and Safety Code §25249.6 (Prop. 65).

The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:

- (1) You have actually taken the corrective steps that you have certified in this
- (2) The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice.
- (3) The Noticing Party receives the required \$500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.
- (4) This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.

PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE **NOTICING PARTY**

The alleged violation is for an exposure to: (check one)

—_Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.
A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical 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.
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.
Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.
IMPORTANT NOTES:

(1) You have no potential liability under California Health and Safety Code §25249.6 if your business has nine (9) or fewer employees.

(2) Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.

Date:

Page 2

Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE

Certification of Compliance

Accurate completion of this form will demonstrate that you are now in compliance with California Health and Safety Code §25249.6 for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):

[] Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises; [] Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately showing its placement on my premises; OR [] Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.
My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).
Signature of alleged violator or authorized representative Date
Name and title of signatory
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.