#### 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 29, 2023

President/CEO	President/CEO
Shinano International Commerce Inc.	Daiso Industries Co. Ltd.
2601 Tokugawacho	I-4-14 Saijyo Yoshiyukihigasi
Nagoyo Shi Higashi Ku	Higashihoroshima City
Aichi 461-0023	Hiroshima, 739-8501
JAPAN	JAPAN
Member/Manager	President/CEO/Owner
Daiso California LLC	Daiso
c/o National Registered Agents, Inc.	#001029 Downey Promenade
330 N. Brand Blvd., Suite 700	8970 Apollo Way, Suite A10
Glendale, CA 91203	Downey, CA 90242

### 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 § 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.

<sup>&</sup>lt;sup>1</sup> 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. DESCRIPTION OF THE VIOLATION

- Enforcer: Ema Bell, 222 S. Figueroa St. Apt. 1212, Los Angeles, CA 90012-2581; (Ph) 424-332-3817.
- 2. Alleged Violator(s): Shinano International Commerce Inc.; Daiso Industries Co. Ltd.; Daiso California LLC; Daiso
- 3. Time Period of Exposure: Violations have been occurring since at least November 29, 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 <sup>2</sup>	Non- Exclusive Examples of the Product
Mug	Fruit Bouquet Mug
	UPC# 4580583326736

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.

<sup>&</sup>lt;sup>2</sup> 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.
- (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 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 29, 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 29, 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
Shinano International Commerce Inc.	Daiso Industries Co. Ltd.
2601 Tokugawacho	I-4-14 Saijyo Yoshiyukihigasi
Nagoyo Shi Higashi Ku	Higashihoroshima City
Aichi 461-0023	Hiroshima, 739-8501
JAPAN	JAPAN
Member/Manager	President/CEO/Owner
Daiso California LLC	Daiso
c/o National Registered Agents, Inc.	#001029 Downey Promenade
330 N. Brand Blvd., Suite 700	8970 Apollo Way, Suite A10
Glendale, CA 91203	Downey, CA 90242

On November 29, 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 29, 2023, in Bala Cynwyd, Pennsylvania.

Evan J. Smith

Mameda County District Attorney 9776 Oakport Street, Suite 650 Oakland, CA 94621 CEPPT 1065@acsiv.org	The Romeniate Teri Verber Salzer San lasguin Conney Ofserist Astoney 222 E. Weber Avgstre, Roden 202 Stackten, CA 55002 DACCOMMER Sprisonusculs (disjedn.org	htenerable Anne Marie Schubert Sacamento County District Attorney 901 G Street Sacramento, CA 95814 Propo5@sacda.org
The Honorable Allison Haley Naga County District Attorney I 127 First St., Suite C Naga, CA 94559 CEPD@countyofnaga.org	The Honorable Jeffray 3. Rosell Sunta Cruz County District Attorney 191 Ocean Street Sunta Cruz, CA 95060	The Honorable Summer Stephan San Diego County District Attorney 300 West Broadway San Diego, CA 92101
The Honomb ( ) Chart	Propisida@sangerazeouney.us	SanDiegoDAProp65@sdcda.org
The Honorable Jeff W. Reisig Yolo County District Attorney 301 Second Street Woodland, CA 95695 Stead Ovolecounty org	Middella Latimer, Program Coordinator Lassen County 220 S. Lassen Street Susanville, CA 96130 relatimes@co.bassen.ea.us	Mark Ankcorn, Deputy City Attorney City of San Diego 1200 Third Avenue San Diego, CA 92101
loud Parter	Aleibea M. Sargent	CityAstyProp65@sandiego.gov
Supervising Deputy District Attorney Santa Clara County 70 W Hedding Street San Jose, CA 95110	Assistant District Attorney Sun Francisco District Attorney's Office 550 Rhode Island Street San Francisco, CA 94103	Christopher Daibey, Deputy District Attorney Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101
The Honorable Gregory D. Totten,	Bleinen sammen Defenov over	DAPropos@co.senta-barbera.ca.us
300 9 Victoria Avenue Ventura, CA 93009	The Honorable Barbara Yook Calmass Conney District Attorney 891 Mountain Ranch Road San Andreas, CA 95249	Walerie Lopez, Deputy City Attorney Office of the City Attorney 1390 Market Street, 7th Floor San Francisco, CA 94102
pracey Grassini	Propessing Cop. onlayers.co. us	Valence Lepez@ufcityatty.org
Deputy District Attorney	Beic J. Dobroth	Demnine M. Facioni
Costa Courbe	Dentry District Attorney	Deputy District Attorney
300 Ward Street	See Luis Obispo County County Govt Center Annex, 4º Floor	Monterey County
Martinez, CA 94553	See Luis Obispo, CA 93408	1200 Aguajito Road
arasini@contracostada.org	submittation stores as	Monterey, CA 93940
The Honorable Thomas Hards	The Samuelie Shillip I. Chao	Prop65DA@co.montercy.ca.us
Proper Country   Melmot A second	Talor County District Assormay	The Honorable Clifford Newell
168 M. Edwards Street Independence, CA 93526	231 S Mooney Blvd Visulia, CA 95370	Nevada County District Attorney 201 Commercial Street
Everis@invectority.us	Francis (Dec. pulses, ca. us	Nevada City, CA 95959
The Floriorable Paul E. Zellerbach	The bionorable Stephan Passalacqua	DA Propési@co-nevada.ca.us The Honorable David Hollister
Riverside County District Attorney 3073 Orange Street	Buttomer District Attorney	Plamas County District Attorney
SPECIAL CA GOSDI	500 Administration Drive	520 Main Street, Room, 404
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Mariposa County District 4 th	And Monomble Kinnerly Lewis	The Honorable Morgan Briggs Gire
- DUA / 3()	Marcal County District Attorney	Placer County District Attorney
fariposa, CA 95338	900 West Main Street	10810 Justice Center Drive
EDROTORIDOS GOMENTO OTO	Mercol, CA 95346	Roseville, CA 95678
	Propos@countyofmercod.com	prop65@placer.ca.gov
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Federation & Small	Fresno, CA 93721	
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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-nextice

# SERVICE LIST

This benderable at a control			
The Honocullie Namey O'Malkey Alameda County District Atterney 1225 Fallon Street, Room 900 Oakland, CA 94812	The Honorable Stacey Montgomery Lasten County Clatifet Alterney 220 South Lasten Street, Ste. 8 Suganville, CA 96130	The Honorable Candice Hooper San Banito County District Altomay 419 4th Street, Second Floor Hollister, CA 95203	The Honorable Gregg Cohen Tehama County District Atlomey 444 Oak Street, Room L Rad Sluff, CA 96080
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The Honorable Terese Orabec	The Honorable Jackie Lacey	The United Street	The Honorabia Eric Herylord
Alpine County District Attorney	LOS ANGRIES County Dietrics agreement	The Honorable Michael Ramos	Trinity County District Attorney
270 Laramie Street, PO BOX 248	211 West Temple Street, Suite 1200	San Barnardino County District Attorney 303 West 3rd Street, 6th Floor	P.O. 30x 310
Markleevilla, CA 96120	Los Angeles, CA 90012	Sen Gernardino, CA 92415-0502	Weaverville, CA 96093
The Honorable Todd Riebe	Land the control of		
Amador County District Attorney	The Henorable Bavid Linn	The Honorable Bonnie Dumanis	The Honorable Tim Ward
708 Court Street	Wadera County District Attorney	San Olego County District Attorney	Tulare County District Attorney
Jackson, Ca gesto	209 West Yosemite Avenue	330 W. Broadway Street	221 South Mooney Soulevard, Rm 224
The Honorable Michael Plantsay	Madera, CA 98687	San Diego, CA 92101	Vigalia, CA 93291-4593
Butte County District Attorney	The Hondrable Soveret Beitvesten	The Hanorable George Gescon	The Honorable Caura Krieg
25 County Center Orive	Warn County Obstelet Attendent	San Francisco County District Attorney	Tuglumne County District Altorney
Oroville, CA 95965	3501 Civic Center Orive, Room 130	650 Bryant Street, Room 322	423 North Washington Street
	San Raigel, CA 94903	San Francisco, CA 94103	Sonora, CA 95370
The Honorable Barbera Yook	The Honorable Thomas Cooke		
Ulliaveline County Planting Assess	Marinogo Courty City in Cooke	The Honorable Tori Verber Salazar	The Hangrable Gregary Tolten
	Mariposa County District Attorney	San Joaquin County District Attorney	Ventura County District Attorney
Dall Andreas CA 95240	5101 Jones Street, P.O. Box 730	222 East Weber Avenue, Room 202	800 South Vitioita Avenue
The Honorable John Course	Mariposa, CA 95338	Stockton, CA 95201	Ventura, CA 99009
Courty District Afternay	The Honorable C. David Eyster	The Honerable Dan Dow	The Honorable Jeff Reisig
345 Fifth Street	Mendecine County District Attorney	San Luis Obispo County District Ally	Yold County District Altomey
Colusa, CA 95932	100 North State Street, P.O. Sox 1000 Uklah, CA 95482	1095 Palm Street, 4th Floor	301 Second Street
the Honorable Mark O-1	The Venneth	San Luis Obisso, CA 93408	Woodland, CA 95695
Joseph County District Angrass	The Hanurable Larry Morse II	The Honorable Stephen Wagstaffe	The Henerable Patrick McGrath
	Merced County District Attorney 550 W. Main Street	San Mateo Courtly District Attorney	Yuba County District Attorney
Marlinez, CA 94553	Merced, CA 95340	400 County Center, Third Floor	215 Fifth Siresi
ne Honorship Dolo Tuta-	The Honorable Jordan Funk	Fledwood City, CA 94063	Maryaville, CA 95901
O PROBLE GRANDS Clinteles AND	Modes County Florida Ave	The Rengrable Joyce Dudley	The Henorable Milke Fauer
	Modec County District Attorney 204 S. Court Street, Suite 202	Santa Barbara County District Attorney	Office of the City Attorney, Los Angeles
Crescent City, CA 95531	Alturas, CA 98101	1112 Santa Barbara Street	800 City Hall East
	Andreas, CA 90101	Santa Barbara, CA 93101	200 North Main Street
he Honeralate Vern Plerson	The Honorable Tim Kendell	<u> </u>	Los Angeles, CA 90012
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	Mano County Olatriot Attorney P.O. Box 617	Santa Clara County District Attorney	Office of the City Attorney, Sacramento
lacerville. CA onegy		70 West Hedding Street, West Wing	915 I Sheet, 4th Floor
THE PROGRAMMA LINE COLUMN	Bridgeport, CA 93517	San Jose, CA 95110	Sacramento, CA 95814
	The Hendrable Dean Flippo	The Honorable Jeff Rosell	The Honerable Jan Goldsmith
CONTRACT STEEL STORY	Monterey County District Altorney	Santa Cruz County District Attorney	Office of the City Allomey, San Diego
TESTUR CHR SHEDI	P.O. Box 1131	701 Ocean Street; Room 200	1200 Third Avenue, Suite 1620
he Hongrights reviews on	Salines, CA 93302	Santa Cruz, CA 95060	San Diego, CA 92101
Main County District Attornoon	The Honorable Aillson Haley	The Hunorable Stephen Carlton	The Honorable Dennis Herrera
.O. Box 430	Napa County District Attorney	Shasta County Ulstrict Attorney	Office of the City Attorney, San
/Illows, CA 95988		1355 West Street	Francisco
	1127 First Street, Suite C		
	Napa, CA 94559	Redding, CA 86001	1 Dr. Carlton B. Goodlett Place
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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 employes 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 contaminant<sup>2</sup> 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.

<sup>&</sup>lt;sup>2</sup> 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 form.
- (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.

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Date:

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 and attaching a copy of that warning and a photograph accurplacement on my premises; [] Posting the warning or warnings demanded in writing by the attaching a copy of that warning and a photograph accurately my premises; OR [] Eliminating the alleged exposure, and attaching a statement how the alleged exposure has been eliminated.	rately showing its ne Noticing Party, and y showing its placement on
My statements on this form, and on any attachments to it, and correct to the best of my knowledge and belief and are made carefully read the instructions to complete this form. I unders statement on this form, I may be subject to additional penaltic Water and Toxic Enforcement Act of 1986 (Proposition 65).	e in good faith. I have
Signature of alleged violator or authorized representative	Date
Name and title of signatory	
FOR FURTHER INFORMATION ABOUT THE LAW OR RE	GULATIONS

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.