#### LAW OFFICES

### **BRODSKY SMITH**

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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

### February 15, 2024

President/CEO	Owner
The Found, Inc.	The Found
c/o James York	3401 N. Kedzie
2138 W. Moffat Street	Chicago, IL 60618-5619
Chicago, IL 60647-5522	
President/CEO	President/CEO
The TJX Companies, Inc.	The TJX Companies, Inc. dba TJ Maxx
c/o The Corporation Trust Company	c/o The Corporation Trust Company
Corporation Trust Center	Corporation Trust Center
1209 Orange Street	1209 Orange Street
Wilmington, DE 19801	Wilmington, DE 19801
President/CEO	
The TJX Companies, Inc.	
c/o CT Corporation System	
101 Federal Street	
Boston, MA 02110	

### 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

<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.

how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

### 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): The Found, Inc.; The Found; The TJX Companies, Inc.; The TJX Companies, Inc. dba TJ Maxx
- 3. Time Period of Exposure: Violations have been occurring since at least February 15, 2024 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	The Found Gifts and More "First But Not Last" Mug
	80-2817-812986-000799-23-2

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

<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.

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.

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: February 15, 2024

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 February 15, 2024 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	Owner
The Found, Inc.	The Found
c/o James York	3401 N. Kedzie
2138 W. Moffat Street	Chicago, IL 60618-5619
Chicago, IL 60647-5522	
President/CEO	President/CEO
The TJX Companies, Inc.	The TJX Companies, Inc. dba TJ Maxx
c/o The Corporation Trust Company	c/o The Corporation Trust Company
Corporation Trust Center	Corporation Trust Center
1209 Orange Street	1209 Orange Street
Wilmington, DE 19801	Wilmington, DE 19801
President/CEO	
The TJX Companies, Inc.	
c/o CT Corporation System	
101 Federal Street	
Boston, MA 02110	

On February 15, 2024 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 February 15, 2024, in Bala Cynwyd, Pennsylvania.

Evan J. Smith

7776 Oakport Street, Suite 650	San Anguin Councy Ofserice Associacy	Sacramento County District Attorney
Marchard, CA 94621	222 E. Weber Availie, Room 202 Stockion, CA 95262	901 G Street
CEPEProp65@acsiv.org	Stafform than Brown and Co.	Sugramento, CA 95814
The Honorable Allison Halay	DACoupuner Environmental Orioda oug The Honorable Jeffrey S. Rosell	Prop63@ssecda.org
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112/ First St., Suite C	301 Ocean Street	San Diego County District Attorney
Napa, CA 94559	Sunti Cruz, CA 95060	300 West Broadway
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eseal@yolocounty.org	Susanville, CA 96130	San Diego, CA 92101
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San Jose, CA 95110	250 Rhode Island Street	1112 Santa Barbara Street
PUBla secgov org	San Francisco, CA 94103	Santa Barbora, CA 93101
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The Honorable Gregory D. Totter,	The Honorable Barbara Yook	Walerie Lopez, Deputy City Attorney
Ventura County District Attorney	Calayoras Consisty District Attorney	Office of the City Attorney
800 S Victoria Avenue	191 Mountain Ranch Road	4390 Market Street, 7" Flour
Ventura, CA 93009	San Andreas, CA 95249	Processes and the second secon
daspecialogs@ventura.org	CONSSERVICES CALANCES CO. US	Sea Francisco, CA 94102
Stacey Grassini	Brie J. Dobroth	Valenie, Lepezial afecty atty.org
Deputy District Attorney	Deputy District Attorney	Jemnine M. Paoioni
Contra Costa County	Luis Obispo County	Deputy District Attomey
100 Ward Street	Print Data Court Country	Monterey County
dartinez, CA 94553	Comy Govt Center Annex, 4" Floor	1200 Aguajito Road
Elassitui@contracostada oru	Sas Luis Obispo, CA 93408	Monterey, CA 93940
ne Honorable Thomas Hardy	edobrothálico sto ca ca	Prop65DA@co.montercy.ca.us
The County District Attorney	The Regardote Phillip 1. Cline	The Honorable Clifford Newell
58 N. Edwards Street	Tolore County District Autoropy	Nevada County District Attorney
idependence, CA 93526	22 i S Monney Blwd	201 Commercial Street
woda@iiwacounty.us	Visalia, CA 953/10	Nevada City, CA 95959
lie Florosohi - D	Francis (Dog. pulsace, ca. ss	DA Prophi@co.nevedu.ca.us
te Honorable Paul E. Zellerbach	The Honorable Stephan Passalacqua	The Flororable David Hollister
Werside County District Attorney	Section County District Attorney	Plamas County District Attorney
772 Orange Street	500 Administration Drive	20 Main Street, Room, 404
verside CA 92501	Sonoma, CA 95403	Quincy, CA 95971
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J- DOX /3()	biomed County District Attorney	Placer County District Attorney
ariposa, CA 95338	530 Wast Main Street	10810 Justice Center Drive
Mail and the state of the state	Mercod, CA 95340	Roseville, CA 95678
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MJ088, CA 96113	Fresho, 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-actice

# SERVICE LIST

the Honogatile Marroy O'Mailtey			
Alondada Carret St.	The Honorable Stacey Montgomery	The Honorable Candice Hooper	The Honorable Gragg Cohen
Alameda County District Attorney	Cassen County Olstrict Attorney	San Benito County District Altomay	Tehams County District Attorney
1225 Fallon Street, Room 900	220 South Lassen Street, Ste. 8	419 4th Street, Second Floor	444 Oak Street, Room L
Oakland, CA 94612	Susanville, CA 96130	Hallister, CA 95203	Red Sluff, CA 96080
	L		
The Hongrabia Tarese Orabac	The Honorable Jackie Lacey	The Honorable Michael Ramos	The Honorable Eric Herylord
Alpine County District Attorney	Los Angeles County District Attorney		Trinity County District Attorney
270 Laramie Street, PO BOX 248	211 Mest Territory Clarific Attorney	San Bemarding County District Attorney	P.O. Box 310
Markleeville, CA 96120	21! West Temple Street, Suite 1200	303 West 3rd Street, 6th Floor	Weaverville, CA 96093
	Los Angeles, CA 90012	San Sarnardino, CA 92415-0502	(Meavelulle, CA 36033
The Henorable Todd Riebe			
Amador County District Attorney	The Honorable Bavid Linn	The Honorable Bonnie Dumanis	The Honorable Tim Ward
708 Court Street	Madera County District Attorney	San Olego County District Attorney	Tulare County District Altomey
you court attest	209 West Yosemite Avenue	330 W. Broadway Street	221 South Magney Baulevard, Rm 224
Jackson, CA 96642	Madera, CA 93537	San Diego, CA 92101	Viestia, CA 93291-4593
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25 County Center Drive	Marin County Olstriot Attorney	San Francisco County District Attorney	Tualumna County District Attorney
Oroville, CA 95965	3501 Clvic Center Orive, Room 130	850 Bryant Street, Room 322	429 North Washington Street
O. 00 MA 39309	San Raigel, CA 94909	San Francisco, CA 94109	Sonora, CA 95370
The Honorable Barbara Yook			Telboo
Califerns County District Attorney	The Honorable Thomas Cooke	The Honorable Tori Verber Salazar	The Honerable Gregory Tolten
891 Mountain Rangh Road	Mariposa County District Attorney	San Joaquin County District Attorney	Ventura County District Attorney
San Andrew Canton Hoad	5101 Jones Street, P.O. Box 730	222 East Weber Avenue, Room 202	800 South Victoria Avenue
San Andreas, CA 95249	Marinosa, CA 95998	Stockton, CA 95201	Ventura, CA 93009
The Honorable John Source			The Honorable Jeff Reisig
Colusa County District Attorney	The Handrable C. David Eyster	The Honorable Can Dow	
346 Fifth Street	Mendadino County District Attorney	San Luis Obispo County District Atty	Yala County District Altamey
Colusa, CA 95932	100 North State Street, P.O. Box 1000	1035 Palm Street, 4th Floor	301 Second Street
A 30337	Ulean, CA 95489	San Luis Obiseo, CA 93408	Woodland, CA 98695
The Hongrable Mark Paterson	The Honorable Larry Morse II	The Kongrable Stephen Wagstaffe	The Henerable Patrick McGrath
Contra Costa County Olectics Androon	Merged County Disirict Attorney		Yuba County Olstrict Attorney
and areast steast	SED 181 MALE OF THE PROPERTY	San Mateo Countly District Attorney	
Martinez, CA 94559	550 W. Main Street	400 County Center, Third Floor	215 Filth Sirsel
The Honorable Date Trigg	Merced, CA 95340	Redwood City, CA 94069	Manusullia, CA 95901
Del Mara Carrett Dale Trigg	The Honorable Jordan Funk	The Hengrable Joyce Oudley	The Henerable Mike Feuer
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450 H Street, Room 171	204 S. Court Street, Suite 202	1112 Santa Barbara Street	800 City Hall East
Crescent City, CA 95531	Alturas, CA 98101		200 North Main Street
		Santa Barbara, CA 93101	
The Honorable Vern Plerson	\ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \	1	Los Angelos, CA 98912
El Devede County District Attorney	The Honorable Tim Kendall	The Ronorable Jeffray Rosen	The Hongrable James Sancher
The Court of the C	Mono County Olatrict Attorney	Santa Clara County District Attorney	Office of the City Attorney, Sacramento
778 Pacific Street	P.O. Box 617	70 West Hedding Street, West Wing	915   Sireet, 4th Floor
Placerville, CA 95657	Bridgeport, CA 93517		Sacramento, CA 95614
the Handstold Libra Smithanna	- Stradebolk OV 3001)	San Jose, CA 35110	
resno County District Attorney	The Honorable Oean Flippo	The Honorable Jeff Rosell	The Honorable Jan Goldsmith
220 Tulane Sheet, #1000	Monterey County District Altorney	Santa Cruz County District Attomay	Office of the City Attomey, San Diego
erro raidié anent 4,1000	P.O. Box 1131	701 Ocean Street, Room 200	1200 Third Avenue, Suite 1520
(esta, OA 9972)	Salinea, CA 98502	Santa Gruz, CA 95050	San Diego, CA 92101
the Handralate Ewayne Stewart	The Honorable Alifson Haley		The Hungrable Dennis Herrera
Idill Vounty District Attorney	The Honorable Allison Haley	The Honorable Stephen Carlton	Office of the City Altomey, San
.O. Box 430	Napa County District Atterney	Shasta County District Attorney	
	1127 First Street, Suite C	1355 West Street	Francisco
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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 fand 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 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?

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 8 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

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:

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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 a any location on the premises.	i) t
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	3

## 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.

alleged violator and primarily intended for parking noncommercial vehicles.

(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:

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

Page 2

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 the and attaching a copy of that warning and a photograph accurate placement on my premises;	nat complies with the law, tely showing its
[] Posting the warning or warnings demanded in writing by the attaching a copy of that warning and a photograph accurately my premises; OR	Noticing Party, and showing its placement on
[] Eliminating the alleged exposure, and attaching a statemen how the alleged exposure has been eliminated.	t accurately describing
My statements on this form, and on any attachments to it, are correct to the best of my knowledge and belief and are made carefully read the instructions to complete this form. I understatement on this form, I may be subject to additional penaltie Water and Toxic Enforcement Act of 1986 (Proposition 65).	in good faith. I have and that if I make a false
Signature of alleged violator or authorized representative	Date
Name and title of signatory	
FOR FURTHER INTORNATION ADOLLT THE ANNO DE	21/4 4 71/25 1/2

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.