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

February 21, 2024

President/CEO	President/CEO
Beauty 21 Cosmetics, Inc.	Ulta Beauty, Inc.
c/o Chafe Yu Trinh	c/o The Prentice-Hall Corporation System, Inc.
2021 s. Archibald Ave.	251 Little Falls Drive
Ontario, CA 91761	Wilmington, DE 19808
President/CEO	Member/Manager
Ulta Beauty, Inc.	Ulta Beauty Cosmetics, LLC
c/o Illinois Corporation Service Company	c/o Illinois Corporation Service Company
801 Adlai Stevenson Drive	801 Adlai Stevenson Drive
Springfield, IL 62703-4261	Springfield, IL 62703-4261

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 Precila Balabbo ("Balabbo"), 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, Balabbo 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 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. DESCRIPTION OF THE VIOLATION

- Enforcer: Precila Balabbo, 285 W. 6th Street, Unit 209, San Pedro, CA 90731; (Ph) 818-434-4023.
- 2. Alleged Violator(s): Beauty 21 Cosmetics, Inc.; Ulta Beauty, Inc.; Ulta Beauty Cosmetics, LLC
- 3. Time Period of Exposure: Violations have been occurring since at least February 21, 2024 and are continuing to this day.
- **4. Product: Listed Chemical:** Diethanolamine (DEA) is listed under Proposition 65 as a chemical known to the State to cause cancer.

5. Product:

Product ²	Non- Exclusive Examples of the Product
Mascara	LA Girl Jetsetter Mascara
	UPC# 0 81555 22656 5

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 exposure. 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 Balabbo 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, Balabbo 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 Balabbo'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.

Balabbo 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 I 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, Precila Balabbo.
- (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 21, 2024

Evan J. Smith

Attorney for Precila Balabbo

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 21, 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	President/CEO
Beauty 21 Cosmetics, Inc.	Ulta Beauty, Inc.
c/o Chafe Yu Trinh	c/o The Prentice-Hall Corporation System, Inc.
2021 s. Archibald Ave.	251 Little Falls Drive
Ontario, CA 91761	Wilmington, DE 19808
President/CEO	Member/Manager
Ulta Beauty, Inc.	Ulta Beauty Cosmetics, LLC
c/o Illinois Corporation Service Company	c/o Illinois Corporation Service Company
801 Adlai Stevenson Drive	801 Adlai Stevenson Drive
Springfield, IL 62703-4261	Springfield, IL 62703-4261

On February 21, 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 21, 2024, in Bala Cynwyd, Pennsylvania.

Evan J. Smith

7776 Oakport Street, Suite 650 Oaklead, CA 94621 CEPD pap65@aceiv.org	Ban baguin Councy Diseriet Astomoy 222 E. Weber Avgune, Room 202 Stacklen, Co. SSA92	Section 20 County District Attorney 901 G Street Section 200 CA 95814
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Nava County Dietrict A Pomer	The Honorable Jeffray 3. Rosell	The Honorable Summer Stephan
HILL CHIST St Strike C	Senta Cruz County District Attorney	San Diego County District Attorney
Napa, CA 94559	Sunti Cruz, CA 95060	200 West Broadway
CEPD@countyofnaps.org	Presist A. C. Sugarante oung us	San Diega, CA 92101
The Honorable Jeff W. Pairie		SanDiegoDAProp65@sdods.org
1100 County District A Horney	Michella Latirner, Program Coordinator	Mark Ankcorn, Deputy City Attorney
Pul Second Street	Eassen County	City of San Diego
Woodland, CA 95695	220 S. Lassen Street	1200 Third Avenue
efendia volacounty.org	Susacytite, CA 96130	San Diego, CA 92101
Bud Porter	relatingsides, bissen en en	CityAstyProp65@sandiego.gov
Supervising Deputy District Attorney	Alethea M. Sargent	Christopher Dalbey,
Santa Clara County	Assistant District Attorney	Deputy District Attorney
70 W Hedding Street	San Francisco District Attorney's Office	Santa Barbara County
San Jose, CA 95110	200 Rhode Island Street	III2 Santa Barbara Street
EPUpda scogov org	San Francisco, CA 94103	Senta Barbara, CA 93101
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The Honorable Gregory D Totten,	The Honorable Barbara Yook	
I SHOW I WOMEN AND	Calmens Consisty District Attorney	Valerie Lopez, Deputy City Attorney
SV ICIOFIA AVERTIS	191 Mountain Ranch Road	Office of the City Attorney
Ventuca, CA 93009	Ran Andreas, CA 95249	1390 Market Street, 7th Floor
daspecialops@ventura.org	Figures of the parties of the parties	San Francisco, CA 94102
Grassini	Brie J. Dobroth	Valence, Lapez@afectyarty.org
Deputy District Attorney		Jemnine M. Paeioni
Louis Costa County	Denny District Automey	Deputy District Attorney
Ward Street	See Luis Obispo County	Monterey County
Martinez, CA 94553	County Govt Center Annex, 4" Floor	1200 Aguajito Road
SEGMENI Oppostance and annual contraction annual contraction annual contraction annual contraction annual contraction annual contraction	San Luis Obispo, CA 93408	Monterey, CA 93940
Jane Honorable Thomas Hards	edobreshillara.ela.ca,ca	ProphSDA@co.morrercy.ca.us
thyo County District Attorney	The Richards Phillip J. Cline	The Honorable Clifford Newell
168 N. Edwards Street	I those County District & Romey	Nevada County District Attorney
Independence, CA 93526	(CA) & Meanor Shud	201 Commercial Street
ayoda@ayacounty.us	Visalia, CA 95070	Nevada City, CA 95959
The Flores 11	Proposition tulace cause	DA.Prop65@so.nevada.ca.us
Tae Honorable Paul E. Zellerbach	Tim Elonorable Stephan Passalacqua	Tite Honorable David Hollister
Riverside County District Attorney	Summa County District Attorney	
CLOUBE STROOT	560 Administration Drive	Plamas County District Attorney
Riverside, CA 92501	DENOTES, CA 95403	\$20 Main Street, Room, 404
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The Honorable Walter W Mail	CONTROL SOURCES - GOVERTA OLE	davida olistan dispunity of plumas.com
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Marinosa CA 95338	F30 West Main Street	10810 Justice Center Drive
organization of the state of th	Mercol, CA 95340	Roseville, CA 95678
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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.co.gov/prop05/add-60-day-notice

SERVICE LIST

The Honoratile Namey O'Reallary Alameda County District Attamey	The Honorable Stacey Mentgomery Lassen County Clatriot Attorney	The Honorable Candige Hooper San Banito County District Altomey	The Honorable Gragg Cohen Tehama County District Atlomay
1225 Fallon Street, Room 900 Oakland, CA 94512	220 South Lassen Street, Ste 8 Susanville, CA 96130	419 4th Street, Beand Floor Hallster, CA 95203	144 Oak Street, Room L Red Stuff, CA 96080
The Honorable Terese Orabec	The Honorable Jackie Lacey	The Honorable Michael Plamos	The Honorable Eric Heryland
Alpine County District Attorney 270 Larantie Street, PO BOX 248	Los Angeles County Oletelet Angrami	San Bamardino County District Attorney	Trinity County District Atlamay
Markingville, CA 98120	211 West Temple Street, Suite 1200 Los Angeles, CA 90012	303 West 3rd Street, 6th Floor Sen Sernarding, CA 92415-0502	P_O_ 3ex 310 Weaverville, CA 96093
The Honorable Todd Riebe	The Honorable Bavid Linn	The Honorable Bennie Dumanis	The Honorable Tim Ward
Amader County District Attorney 708 Court Street	Madera County District Attorney	San Ulego County District Attorney	Tulare County District Attorney
Jackson, CA 95542	209 West Yosamite Avenua	330 W. Broadway Street	221 South Mooney Squievard, Rm 224
he Hongookle Michael Storrow	Madera, CA 98537	San Diego, CA 92101	Viguela, CA 93291-4593
autie County Clairiet Attorney	The Honorable Edward Berberlan Marin County Clatrict Attorney	The Honorable George Gascon	The Honorable Caura Kileg Tuglumne County District Altorney
as County Center Orive	9501 Cluic Center Orive, Room 130	San Francisco County Disiriet Attorney 850 Bryant Street, Room 322	423 North Washington Street
Oroville, CA 95965	San Raigel, CA 94909	San Francisco, CA 94109	Sonora, CA 95370
The Honorable Sarbere Yook	The Honorable Thomas Cooke		The Honorable Gragory Tolten
Districted County District Ass.	Mariposa County District Attorney	The Honorable Tori Verber Salazar	Vantura County Clistrict Altorney
o Wountain Hanco Road	S101 Jones Street, P.O. Box 730	San Joaquin County District Afterney 222 East Weber Avenue, Room 202	800 South Victoria Avanue
San Andress, CA 95249	Marinoga, CA 95998	Stackton, CA 95201	Ventura, CA 93009
The Henorable John Poyner Colues County District Altorney	The Honorable C. David Svetor	The Honorable Clan Dow	The Hondrable Jeff Reisig
345 Fifth Steper	Mendagina County Clietrics Attornay	San Luis Obispo County District Alty	Yala County District Altamey
Colusa, OA 95930	100 North State Street P.O. Sex 1000	1035 Palm Street, 4th Floor	301 Second Street
The Honorable Mark Potogogo	Ukiah, CA 95492 The Honorable Larry Morse II	San Luis Ohispo, CA 93908	Woodland, CA 95695 The Henerable Patrick McGrath
Junia Gosta County Olectics Attorney	Merged County District Alterney	The Honorable Stephen Wagstaffe San Nateo County District Altomey	Yuba County Olstrict Attorney
AND ANSIED STEAM	550 W. Main Street	400 County Center. Third Floor	215 Filth Sirest
Marlinez, CA 94553 The Honorable Dale Trigg	Merced, CA 99340	Redwood City, CA 94063	Marysylle, CA 95901
20 Pipelo General Olerata Andrea	The Honorable Jordan Funk	The Honorable Joyce Dudley	The Honorable Mike Seuer
SUPL SICERT House 171	Modec County District Attorney	Sania Barbara County District Attorney	Office of the City Attorney, Los Angeles
Crescent City, CA 95531	204 S. Court Street, Suite 202 Alturas, CA 98101	1112 Santa Barbara Sireet	200 Worth Main Street
	PAGE 25, UA 50 10 1	Santa Barbara, CA \$31 01	Las Angeles, CA 80012
he Honeralete Vern Plerson	The Honorable Tim Kendall	The Honorable Jeffrey Rosen	The Floridable James Sanchez
1 Decade County District Attorney 178 Pacific Street	Mono County Olstrict Attorney	Santa Clara County District Attorney	Office of the City Attomey, Sacramento
Placerville, CA 95667	1 P.O. Box 517	70 Wast Hedding Street, West Wing	915 I Street, 4th Floor
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GOU HILBER NIGHT "1000	Monteray County District Attorney P.O. 8ex 1131	Santa Gruz County District Attorney	1200 Third Avenue, Suite 1520
10000 OR 90701	Salinus. CA 93902	701 Ocean Street, Room 200 Santa Cruz, CA 95050	San Diego, OA 92101
he Honorable Dwayna Stewart	The Honorable Aillson Haley	The Honorable Stephen Cartton	The Hungrable Dennis Herrera
Blenn County District Attorney 2.0. Box 430	Napa Geunty District Attorney	Shasta County District Attorney	Office of the City Altomey, San
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Tile Plongrable Maggin Fleming Umboldt County Bluttor Attorney	Napa, CA 94559 The Honorabie Clifford Newell Newada County District Attorney 201 Commercial Street	The Honorable Lawrence Allen Sleria County District Allornay	San Francisco, CA 94102 The Honorable Richard Devile Office of the City Attorney, San Jose 200 East Santa Clara Street,16th Floor
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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 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.
MPORTANT 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 compiled 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.

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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.