

## NOTICE OF VIOLATION

### California Safe Drinking Water and Toxic Enforcement Act

#### Hexavalent Chromium in Gloves Made With Leather Materials

June 20, 2024

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

- For general information regarding the California Safe Drinking Water and Toxic Enforcement Act, see the attached summary provided by the California EPA (copies not provided to public enforcement agencies).
- This Notice is provided by the Center for Environmental Health ("CEH"), 2201 Broadway, Suite 508, Oakland, CA 94612, (510) 655-3900. CEH is a nonprofit corporation dedicated to protecting the environment, improving human health, and supporting environmentally sound practices. Shakoora Azimi-Gaylon is the Toxic Exposures and Pollution Prevention Program Senior Director and a responsible individual within CEH.

#### Description of Violation:

- Violator:  
  
**Topgolf Callaway Brands Corp.**  
2180 Rutherford Road  
Carlsbad, CA 92008
- Time Period of Exposure: The violations have been occurring since at least June 20, 2021 and are ongoing.
- Provision of Proposition 65: This Notice covers the "warning provision" of Proposition 65, which is found at California Health and Safety Code Section 25249.6.
- Chemical(s) Involved: The name of the listed chemical involved in these violations is chromium (hexavalent compounds), which is also known as hexavalent chromium. Hexavalent chromium is listed under Proposition 65 as a chemical known to the State of California to cause cancer and reproductive toxicity. Exposures to hexavalent chromium occur from use of the products identified in this Notice.
- Type of Product: The specific type of product causing these violations is gloves made with leather materials. Gloves are used to protect hands and fingers from the elements, abrasion, and trauma. The gloves at issue are either all leather or made with a combination of leather and non-leather materials. A non-exclusive example of this specific type of product is the Callaway Weather Spann Golf

Glove in Custom White (Style No. 5323073/5323085).

- Description of Exposure: This Notice addresses consumer exposures to hexavalent chromium. Use of the products identified in this Notice results in human exposures to hexavalent chromium. The routes of exposure for the violations are dermal absorption directly through the skin when consumers wear, touch, or handle the products. Additional exposures occur through ingestion via hand to mouth contact after consumers wear, touch, or handle the products. No clear and reasonable warning is provided with these products regarding the carcinogenic or reproductive hazards of hexavalent chromium.

#### **Resolution of Noticed Claims:**

Based on the allegations set forth in this Notice, CEH intends to file a citizen enforcement lawsuit against the alleged violator unless such violator agrees in a binding written instrument to: (1) recall products already sold; (2) provide clear and reasonable warnings for products sold in the future or reformulate such products to eliminate the hexavalent chromium exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health and Safety Code Section 25249.7(b). If the alleged violator is interested in resolving this dispute without resort to litigation, please feel free to contact CEH through its counsel identified below.

If the alleged violator is interested in potentially resolving this dispute by way of reformulating the products at issue rather than providing warnings, there is an opt-in procedure by which entities may agree to the terms of a prior CEH settlement requiring the adoption of state-of-the-art protocols designed to prevent the formation of hexavalent chromium on the surface of the products. For more information on this opt-in procedure, please visit the website established at <https://prop65hexchromesettlement.com/>. However, please note that the deadline to opt in is **July 10, 2024**.

It should be noted that CEH cannot: (1) finalize any settlement until after the 60-day notice period has expired; nor (2) speak for the Attorney General or any District or City Attorney who received CEH's 60-day Notice. Therefore, while reaching an agreement with CEH will resolve its claims, such agreement may not satisfy the public prosecutors.

#### **Preservation of Relevant Evidence:**

This Notice also serves as a demand that the alleged violator preserve and maintain all relevant evidence, including all electronic documents and data, pending resolution of this matter. Such relevant evidence includes but is not limited to all documents relating to the presence or potential presence of hexavalent chromium in leather gloves; purchase and sales information for such products; efforts to comply with Proposition 65 with respect to such products; communications with any person relating to the presence or potential presence of hexavalent chromium in such products; and representative exemplars of each unit of any such products sold by the alleged violator in the year preceding this Notice through the date of any trial of the claims alleged in this Notice.

Please direct any inquiries regarding this Notice to CEH's counsel Joseph Mann at Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117, (415) 913-7800, [jmann@lexlawgroup.com](mailto:jmann@lexlawgroup.com).

**CERTIFICATE OF MERIT**  
**Health & Safety Code § 25249.7(d)**

I, Joseph Mann, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the party identified in the notice has violated Health & Safety Code § 25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney with the Lexington Law Group, and I represent the noticing party, the Center for Environmental Health.

3. Members of my firm and 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 exposures to the listed chemical that is the subject of the action.

4. Based on the information obtained through those consultations, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that “reasonable and meritorious case for the private action” means that the information provides a credible basis that all elements of the plaintiff’s case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.

5. The copy of the Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & Safety Code § 25249.7(h)(2), *i.e.*, (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

June 20, 2024



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Joseph Mann  
Attorney for the CENTER FOR  
ENVIRONMENTAL HEALTH

1 **PROOF OF SERVICE**

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3 I, Lilian Macancela, declare:

4 I am a citizen of the United States and employed in the County of San Francisco, State of  
5 California. I am over the age of eighteen (18) years and not a party to this action. My business  
6 address is 503 Divisadero Street, San Francisco, CA 94117 and my email address is  
7 lmacancela@lexlawgroup.com.

8 On June 20, 2024, I served the following document(s) on all interested parties in this  
9 action by placing a true copy thereof in the manner and at the addresses indicated below:

10 **NOTICE OF VIOLATION OF CALIFORNIA SAFE DRINKING WATER AND  
11 TOXIC ENFORCEMENT ACT;**

12 **CERTIFICATE OF MERIT;** and

13 **THE SAFE DRINKING AND TOXIC ENFORCEMENT ACT OF 1986  
14 (PROPOSITION 65): A SUMMARY** (only sent to those on service list marked with an  
15 asterisk).

16  **BY MAIL:** I am readily familiar with the firm’s practice for collecting and processing mail  
17 with the United States Postal Service (“USPS”). Under that practice, mail would be deposited  
18 with USPS that same day with postage thereon fully prepaid at San Francisco, California in the  
19 ordinary course of business. On this date, I placed sealed envelopes containing the above  
20 mentioned documents for collection and mailing following my firm’s ordinary business practices.

21 *Please see attached service list.*

22  **BY ELECTRONIC MAIL:** I transmitted a PDF version of the document(s) listed above via  
23 email to the email address(es) indicated below before 5 p.m. on the date executed.

24 Pamela Y. Price, Alameda District Attorney  
25 7677 Oakport Street, Suite 650  
26 Oakland, CA 94621  
27 CEPDProp65@acgov.org

28 James Clinchard, El Dorado Assistant District  
Attorney  
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Placerville, CA 95667  
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Barbara Yook, Calaveras District Attorney  
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Devin Chandler, Lassen Program Coordinator  
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Lori E. Frugoli, Marin District Attorney  
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Nevada City, CA 95959  
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1 Jeffrey S. Rosell, Santa Cruz District Attorney  
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3 Prop65DA@santacruzcounty.us

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4 Jill Ravitch, Sonoma District Attorney  
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5 Santa Rosa, CA 95403  
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6  
7 Jeff W. Reisig, Yolo District Attorney  
301 Second Street  
8 Woodland, CA 95695  
cfepd@yolocounty.org

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10 I declare under penalty of perjury under the laws of the State of California that the  
foregoing is true and correct.

11 Executed on June 20, 2024 at San Francisco, California.

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Lilian Macancela

**SERVICE LIST**

Oliver G. Brewer III, CEO\*  
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Carlsbad, CA 92008

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