

NOTICE OF VIOLATION

California Safe Drinking Water and Toxic Enforcement Act

Pulegone in Mint Candy

November 13, 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 Senior Director of the Toxic Exposures and Pollution Prevention Program and a responsible individual within CEH.

Description of Violation:

- Violators: The Hershey Company
19 East Chocolate Ave
Hershey, PA 17033
- Time Period of Exposure: The violations have been occurring since at least November 13, 2021.
- 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 pulegone ("Pulegone"). Exposures to Pulegone occur from ordinary use of the products identified in this Notice.
- Type of Product: The specific type of product causing these violations is Mint Candy such as the York Dark Chocolate Covered Peppermint Patties.
- Description of Exposure: This Notice addresses exposures to Pulegone. Ordinary use of the products identified in this Notice results in human exposures to Pulegone. Pulegone is found in, and comes out of, the products. The route of exposure for the violations is ingestion when consumers eat the products. No

clear and reasonable Proposition 65 warning is provided with these products regarding the presence of Pulegone in the products.

Resolution of Noticed Claims:

Based on the allegations set forth in this Notice, CEH intends to file a citizen enforcement lawsuit against the alleged violators unless such violators agree in a binding written instrument to: (1) recall products already sold or otherwise provided to consumers; (2) provide clear and reasonable warnings for products sold or otherwise provided to consumers in the future or reformulate such products to eliminate the pulegone 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 violators are interested in resolving this dispute without resort to expensive and time-consuming litigation, please feel free to contact CEH through its counsel identified below. 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 violators 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 pulegone in Mint Candy; purchase and usage 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 pulegone in such products; and representative exemplars of any such products provided to customers or consumers 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 Mark N. Todzo at Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117, (415) 913-7800, mtodzo@lexlawgroup.com.

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

I, Mark N. Todzo, 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 violators 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.

November 13, 2024



Mark N. Todzo
Attorney for CENTER FOR
ENVIRONMENTAL HEALTH

EXHIBIT 1
November 13, 2024 Notice of Violation
Pulegone in Mint Candy

Names and Addresses of Responsible Parties	Non-Exclusive Examples of the Products	Further Description of Non-Exclusive Exemplar
<p style="text-align: center;">The Hershey Company 19 E. Chocolate Ave Hershey, PA 17033</p>	<p style="text-align: center;">York Dark Chocolate Covered Peppermint Patties; Net Wt. 10.1 oz (286 g)</p>	<p style="text-align: center;">UPC No. 0-34000-04594-5; 95J19S3RR1C; BB 03 2025)</p>

1 **PROOF OF SERVICE**

2 I, Star Beltman, declare:

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

6 On November 13, 2024, I served the following document(s) on all interested parties in this
7 action by placing a true copy thereof in the manner and at the addresses indicated below:

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

9 **CERTIFICATE OF MERIT;** and

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

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

15 *Please see attached service list.*

16 **BY ELECTRONIC UPLOAD:** I transmitted a PDF version of the document(s) listed above,
17 as well as a Confidential Supporting Certificate of Merit, to the Office of the Attorney General of
California via the Proposition 65 60-Day Notice Search website at [https://oag.ca.gov/prop65/60-](https://oag.ca.gov/prop65/60-day-notice-search)
18 [day-notice-search](https://oag.ca.gov/prop65/60-day-notice-search).

19 **BY ELECTRONIC MAIL:** I transmitted a PDF version of the document(s) listed above via
20 email to the email address(es) indicated on the attached service list [or noted above] before 5 p.m.
on the date executed.

21 Pamela Y. Price, Alameda District Attorney
22 7677 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

James Clinchard, El Dorado Assistant
District Attorney
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23 Barbara Yook, Calaveras District Attorney
24 891 Mountain Ranch Rd.
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Lisa A. Smittcamp, Fresno District Attorney
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25 Stacey Grassini, Contra Costa Deputy
26 District Attorney
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27 Martinez, CA 94553
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Thomas L. Hardy, Inyo District Attorney
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28

1	Devin Chandler, Lassen Program Coordinator 2950 Riverside Dr Susanville, CA 96130 dchandler@co.lassen.ca.us	Anne Marie Schubert, Sacramento District Attorney 901 G Street Sacramento, CA 95814 Prop65@sacda.org
4	Lori E. Frugoli, Marin District Attorney 3501 Civic Center Drive, Room 145 San Rafael, CA 94903 consumer@marincounty.org	Summer Stephan, San Diego District Attorney 330 West Broadway San Diego, CA 92101 SanDiegoDAProp65@sdca.org
6	Walter W. Wall, Mariposa District Attorney P.O. Box 730 Mariposa, CA 95338 mcda@mariposacounty.org	Mark Ankcorn, San Diego Deputy City Attorney 1200 Third Avenue San Diego, CA 92101 CityAttyProp65@sandiego.gov
9	Kimberly Lewis, Merced District Attorney 550 West Main Street Merced, CA 95340 Prop65@countyofmerced.com	Henry Lifton, San Francisco Deputy City Attorney 1390 Market Street, 7th Floor San Francisco, CA 94102 Prop65@sfcityatty.org
11	Jeannine M. Pacioni, Monterey District Attorney 1200 Aguajito Road Monterey, CA 93940 Prop65DA@co.monterey.ca.us	Alexandra Grayner, San Francisco Assistant District Attorney 350 Rhode Island Street San Francisco, CA 94103 alexandra.grayner@sfgov.org
14	Allison Haley, Napa District Attorney 1127 First Street, Suite C Napa, CA 94559 CEPD@countyofnapa.org	Tori Verber Salazar, San Joaquin District Attorney 222 E. Weber Avenue, Room 202 Stockton, CA 95202 DAConsumer.Environmental@sjcda.org
17	Clifford H. Newell, Nevada District Attorney 201 Commercial Street Nevada City, CA 95959 DA.Prop65@co.nevada.ca.us	Eric J. Dobroth, San Luis Obispo Deputy District Attorney County Government Center Annex, 4th Floor San Luis Obispo, CA 93408 edobroth@co.slo.ca.us
20	Morgan Briggs Gire, Placer District Attorney 10810 Justice Center Drive Roseville, CA 95678 prop65@placer.ca.gov	Christopher Dalbey, Santa Barbara Deputy District Attorney 1112 Santa Barbara St. Santa Barbara, CA 93101 DAProp65@co.santa-barbara.ca.us
23	David Hollister, Plumas District Attorney 520 Main St. Quincy, CA 95971 davidhollister@countyofplumas.com	Nora V. Frimann, Santa Clara City Attorney 200 E. Santa Clara Street, 16th Floor San Jose, CA 96113 Proposition65notices@sanjoseca.gov
25	Paul E. Zellerbach, Riverside District Attorney 3072 Orange Street Riverside, CA 92501 Prop65@rivcoda.org	Bud Porter, Supervising Santa Clara, Deputy District Attorney
26		
27		
28		

1 70 W Hedding St
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2 EPU@da.sccgov.org

3 Jeffrey S. Rosell, Santa Cruz District
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7 Jill Ravitch, Sonoma District Attorney
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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.

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Executed on November 13, 2024 at San Francisco, California.

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Star Beltman

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SERVICE LIST

District Attorney of Alpine County
P.O. Box 248
Markleeville, CA 96120

District Attorney of Amador County
708 Court St, Ste. 202
Jackson, CA 95642

District Attorney of Butte County
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District Attorney of Stanislaus County
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Modesto, CA 95354

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Yuba City, CA 95991

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Los Angeles City Attorney's Office
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Michele Buck, CEO*
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