60-DAY NOTICE OF VIOLATION

Cal. Health & Safety Code § 25249.5, *et seq.* (Proposition 65)

DATE: January 31, 2025

TO:Pacific Marketing Alliance, Inc., dba PMAI; JFC International Inc.; Hannam Chain U.S.A., Inc.
California Attorney General's Office; District Attorney's Office for All California Counties; and
City Attorneys for San Francisco, San Diego, San Jose, Sacramento, and Los Angeles

FROM: Consumer Rights Advocates, LLC

I. INTRODUCTION

Consumer Rights Advocates, LLC ("CRA") is an organization dedicated to protecting the public from environmental health hazards and toxic exposures. Acting in the public interest, CRA seeks to safeguard the health of Californians, protect the environment and consumer rights, and hold corporations accountable. CRA has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), codified in California Health & Safety Code § 25249.5 et seq., with respect to the product(s) identified below.

CRA serves this Notice of Violation ("Notice") on PACIFIC MARKETING ALLIANCE, INC., DBA PMAI; JFC INTERNATIONAL INC.; HANNAM CHAIN U.S.A., INC. ("Alleged Violators"), and the appropriate public enforcement agencies pursuant to California Health & Safety Code § 25249.6 et seq. CRA intends to bring a citizen enforcement lawsuit in the public interest 60 days after the effective service of this Notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to redress these violations.

Product Exposure:	See Sections VI
Listed Chemical:	Nitrous Oxide (N2O)
Routes of Exposure:	Inhalation, Ingestion and Dermal Absorption
Type of Harm:	Developmental Toxicity, Birth Defect, and other Reproductive Harm

II. PROPOSITION 65 INFORMATION – SUMMARY

A summary of Proposition 65 and its implementing regulations, prepared by the Office of Environmental Health Hazard Assessment, the lead agency designated under Proposition 65, is enclosed as Appendix A and served on the Alleged Violators. For more information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health Hazard Assessment's ("OEHHA") Proposition 65 Implementation Office at (916) 445-6900.

Specifically, on August 1, 2008, the State of California officially listed Nitrous Oxide (N2O) as a chemical known to cause birth defects or other reproductive harm. N2O became subject to the "clear and reasonable warning" requirements of the act one year later, on August 1, 2009. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). N2O is referred to hereinafter as the "Listed Chemical."

III. STATEMENT OF VIOLATIONS

The Exemplar Product, which causes consumer exposure in violation of Proposition 65, is identified in Section VI ("Covered Product"), along with the specific toxin or carcinogen listed therein. Consumers have been subjected to exposure to the Listed Chemical without receiving the "clear and reasonable warning" required by Proposition 65. In the absence of such warnings, California consumers are deprived of their right to make informed decisions regarding the reduction or elimination of their exposure to the Listed Chemical.

IV. NUMBER AND DURATION OF VIOLATIONS

Every sale of the Covered Product in California, whether in-store, online, or through catalogs, constitutes a violation in the absence of a clear and reasonable warning. These violations have occurred daily since at least January 31, 2023, and will continue until such warnings are provided before exposing California consumers to the Listed Chemical. It should be noted that CRA may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

V. ROUTE OF EXPOSURE

Consumers are exposed to the Listed Chemical through direct dermal contact when they dispense the product into the palms of their hands and apply it to their face. Additionally, consumers ingest the Listed Chemical when they transfer the Listed Chemical from the product to their mouths through hand-to-mouth activities that may continue to occur for a significant period after contact with the product stops. This hand-to-moth activity may come directly from the hand or indirectly through hand contact with items such as food and writing instruments, which are then ingested or placed in the mouth. Consumers are also exposed to the Listed Chemical through inhalation, as it evaporates from the surface of the product into the gas phase and into the surrounding air.

VI. COVERED PRODUCT

The product identified below ("Exemplar Product") was recently purchased and observed as being available for sale in California. Publicly available information regarding its retailers, distributors, importers, and/or manufacturers is provided. The Exemplar Product is provided to assist the Alleged Violators in investigating the consumer exposure outlined in this Notice. It is not intended to be the sole product within the category of the Covered Product; rather, it represents the class of products identified as "**BIFESTA FACIAL CLEANSING**."

Exemplar Product	Toxin/Listed Chemical	Alleged Violators
Bifesta Facial Cleansing Foaming Whip Sebum UPC: 4902806460759 - Item: 13220 - Batch: GAV NC Made in Japan	Nitrous Oxide (N2O)	Pacific Marketing Alliance, Inc., Dba PMAI JFC International Inc. Hannam Chain U.S.A., Inc.

VII. NOTICE OF DUTY TO PRESERVE EVIDENCE

"The duty to preserve evidence is triggered when litigation is pending or reasonably foreseeable, at which time a party is required to preserve all relevant evidence and put into place a litigation hold to preserve relevant documents." *Net-Com Servs. v. Eupen Cable USA, Inc.*, 2013 U.S. Dist. LEXIS 109810, at *6-7 (C.D. Cal. Aug. 5, 2013) (citations omitted).

We accordingly notify the Alleged Violators of their duty to preserve evidence relevant to the potential litigation our client may initiate if the Alleged Violators do not undertake the steps demanded herein. This includes, but is not limited to, documents, tangible things, and electronically stored information (ESI) that are potentially relevant to the anticipated lawsuit, as well as efforts to comply with Proposition 65 from January 31, 2023, through the date of any trial on the claims alleged in this Notice.

VIII. DEMAND TO IDENTIFY MANUFACTURER, PRODUCER, PACKAGER, IMPORTER, SUPPLIER, AND DISTRIBUTOR

Pursuant to 27 C.C.R. 25600.2(g), "[t]he retail seller of a product that may cause a consumer product exposure shall promptly provide the name and contact information for the manufacturer, producer, packager, importer, supplier, and distributor of the product to ... [a]ny person who has served notice under Section 25249.7(d)(1) of the Act alleging that the consumer product causes an exposure that requires a warning under the Act." This notice includes the description of the specific product type that is subject to this notice, as well as one or more specific examples of the product in Section VI.

Please accept this Notice as a formal demand for any non-manufacturing seller or distributor receiving this notice to provide the name and contact information for the manufacturer, producer, packager, importer, supplier, promoter, and distributor of the Covered Product.

IX. UNFAIR AND DECEPTIVE TRADE PRACTICE IN VIOLATION OF SECTION 17200 OF THE CALIFORNIA BUSINESS AND PROFESSIONS CODE

CRA further alleges that the Violator's failure to notify consumers on the packaging that the product contains the Listed Chemical constitutes an unfair and deceptive trade practice in violation of Section 17200 of the California Business and Professions Code.

X. RESOLUTION OF NOTICED CLAIM

Based on the allegations outlined in this Notice, CRA intends to bring a citizen enforcement lawsuit against the Alleged Violators unless the Alleged Violators agree, in a binding written instrument, to (1) either reformulate the Covered Product to eliminate exposure to the Listed Chemical, or if reformulation is not possible or feasible, to provide clear and reasonable warnings for the Covered Product sold or otherwise provided to California consumers in the future, and (2) pay the appropriate civil penalty, fees and costs based on the factors enumerated in California Health and Safety Code Section 25249.7(b). Should the Alleged Violators wish to resolve this matter without engaging in costly and protracted litigation, please contact CRA's counsel, specified below.

XI. CONTACT INFORMATION

The entity giving this Notice is Consumer Rights Advocates, LLC, with a principal address at 856 S. Robertson Blvd. Los Angeles, CA 90035; (424) 355-8505. CRA identifies Faraz Adjnasian as a responsible individual within the entity and requests that all communications be directed to CRA's attorneys at Cornerstone Law Firm, PC.

Consistent with Proposition 65's public interest objectives of eliminating or reducing consumer exposure to the Listed Chemical, CRA seeks a constructive and amicable resolution to address these ongoing violations of California law. If you have any questions or wish to discuss the resolution of this matter, please contact me at <u>david@davarlaw.com</u> and include <u>clerks@davarlaw.com</u> in the email, or direct your correspondences to our office, Cornerstone Law Firm, PC, at 357 S. Robertson Blvd. FL 2, Beverly Hills, CA 90211; Tel: (310) 444-0055; Fax: (310) 444-0066.

Sincerely

Davar Danialpour, Ésq. Cornerstone Law Firm, PC

Attachments: Certificate of Merit; Certificate of Service; The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary; Confidential Information in Support of Certificate of Merit (Attorney General Only)

CERTIFICATE OF MERIT Health and Safety Code Section 25249.7(d)

- I, Davar Danialpour, hereby declare:
- 1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the parties identified in the notice have violated Health and Safety Code § 25249.6 by failing to provide clear and reasonable warnings;
- 2. I am the attorney for the noticing party;
- 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 exposure to the Listed Chemical that is the subject of this action;
- 4. Based on the information obtained through those 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 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 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 and 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).

Dated: 01/31/2025

Davar Danialpour

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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 over the age of 18 and not a party to this case. I am a resident or employed in the county where the mailing occurred. My business address is 357 S. Robertson Blvd. 2ND Floor Beverly Hills, CA 90211.

ON THE DATE SHOWN BELOW, I SERVE THE FOLLOWING DOCUMENTS:

- 1) 60-Day Notice of Violation of Health & Safety Code § 25249.5, ET SEQ.
- 2) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary
- 3) Certificate of Merit pursuant to Health & Safety Code § 25249.7(d)

on the following parties by placing a true and correct copy thereof in a sealed envelope addressed to each of the parties listed below and depositing it at a U.S. Postal Service Office by Certified Mail:

Atta Na alti China aluuna		Attack Income Marine IV
Attn: Naoki Shimokura	Attn: Yoshiyuki Ishigaki	Attn: Jeong Wan Koo
Pacific Marketing Alliance Inc., dba PMAI	JFC International Inc.	Hannam Chain U.S.A., Inc.
21112 Figueroa St STE B	7101 E Slauson Ave	5301 Beach Blvd
Carson, CA 90745-1908	Commerce, CA 90040-3622	Buena Park, CA 90621-1231

Additionally,

ON THE DATE SHOWN BELOW, I SERVE THE FOLLOWING DOCUMENTS:

- 1) 60-Day Notice of Violation of Health & Safety Code § 25249.5, ET SEQ.
- 2) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary
- 3) Certificate of Merit pursuant to Health & Safety Code § 25249.7(d)
- **4)** Supporting Factual Information Sufficient to establish the basis for Certificate of Merits

on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website at: <u>https://oag.ca.gov/prop65/add-60-day-notice</u>

Office of the California Attorney General

Proposition 65 Enforcement 1515 Clay Street, Suite 2000 Oakland, CA 94612-0550

Additionally,

ON THE DATE SHOWN BELOW, I SERVE THE FOLLOWING DOCUMENTS:

- 1) 60-Day Notice of Violation of Health & Safety Code § 25249.5, ET SEQ.
- 2) Certificate of Merit pursuant to Health & Safety Code § 25249.7(d)

on each of the parties on the "Distribution List" attached and depositing it at a U.S. Postal Service office with postage fully prepaid for delivery by First Class Mail, and on each of the parties listed on the "Electronic Service" when a true and correct copy thereof was sent via electronic mail.

Executed on 01/31/2025 in Beverly Hills, California.

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Davar Danialpour

Distribution List

EDCDAPROP65@edcda.usdavidhollister@countyofplumas.comEPU@da.sccgov.orgHonorable Lisa A. SmittcampHonorable Paul E. ZellerbachHonorable Jeffrey S. RosellFresno District AttorneyRiverside County District AttorneySanta Cruz County District Attorneyconsumerprotection@fresnocountyca.govProp65@rivcoda.orgProp65DA@santacruzcounty.usHonorable Thomas L. HardyHonorable Anne Marie SchubertHonorable Carla RodriguezInyo County District AttorneySacramento County District AttorneySonoma District Attorneyinyoda@inyocounty.usProp65@sacda.orgECLD@sonoma-county.orgHonorable Devin ChandlerHonorable Summer StephanHonorable Phillip J. ClineLassen County Program CoordinatorSan Diego County District AttorneyTulare District AttorneyDChandler@co.lassen.ca.usSan Diego DAProp65@sdcda.orgProp65@co.tulare.ca.usHonorable Lori E. FrugoliHonorable Mark AnkcornHonorable Gregory D. TottenMarin County District AttorneySan Diego Deputy City AttorneyVentura County District Attorneyconsumer@marincounty.orgCityAttyProp65@sandiego.govdaspecialops@ventura.orgHonorable Walter W. WallHonorable Henry LiftonHonorable FW. ReisingMariposa County District AttorneySan Francisco Deputy City AttorneyYolo County District Attorney	Alpine County Distical Altorney San Jose City Altorney's Office DA No. 248 Tesh Since City Altorney's Office Son Jose City Altorney's Office Markiewille, CA 96120 Lakeport, CA 9453 Son Jose, CA 9511 Markiewille, CA 96120 Howarable Konge County Distical Altorney Son Jose, CA 9512 Jakes, CA 9562 Los Andrea, Carge County Distical Altorney 215 Finita Sireet, Sonite 152 Jakes, CA 9562 Los Andrea, Carge County Office 155 Miss Sereet, Sonite 152 Bate County Distical Altorney Distical Altorney's Office 155 Miss Sereet, Sonite 152 Bate County Distical Altorney Distical Altorney's Office 155 Miss Sereet, Sonite 152 Bate County Distical Altorney Distical Altorney's Office 155 Miss Sereet, Sonite 300 Colsas, CA 9902 Madera, CA 90537 Howarable Sonite Altorney 156 Sereet, Sonite 300 Colsas, CA 9903 Madera, CA 90537 Howarable County Distical Altorney 156 Sereet, Sonite 300 Colsas, Cardy Distical Altorney Madera, CA 90537 Howarable County Distical Altorney 150 Sereet, Sonite 300 Colsas, Cardy Distical Altorney Madera, CA 90537 Howarable County Distical Altorney 150 Sereet, Sonite 300 <th></th> <th>Distribution List</th> <th></th>		Distribution List	
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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 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. 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 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 employs 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/getMADLs.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 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.

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 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 <u>P65Public.Comments@oehha.ca.gov.</u>

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.