KJC/LAW GROUP
LITIGATION AND TRIAL LAW

Kevin J. Cole, Esq.
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April 25, 2025

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED & E-MAIL

Nestle USA, Inc.
c/o Leanne Geale, Esq.
Executive Vice President & Group General Counsel
1812 N. Moore Street
Arlington, VA 22209

Nestle USA, Inc.
c/o C T Corporation System
330 N. Brand Blvd.
Glendale, CA 91203

Ralphs Grocery Company
c/o CSC – Lawyers Incorporating Service
2710 Gateway Oaks Dr., Suite 150 N
Sacramento, CA 95883

Ralphs Grocery Company
c/o General Counsel
1014 Vine Street
Cincinnati, OH 45202

Re: *Proposition 65 Notice of Violation*

To Whom It May Concern:

We represent Zachary Stein ("Plaintiff"), a citizen of the State of California acting in the interest of the general public. Although Plaintiff shall only be contacted through his counsel, his contact information is as follows: 1246 N. Orange Dr, Unit 7, Los Angeles, CA 90038; (248) 225-3096. *See* 27 C.C.R. § 25903(b)(2)(A)(1).

This letter serves as Notice that Nestle USA, Inc. ("Nestle," as the manufacturer) and Ralphs Grocery Company ("Ralphs," as the distributor and retailer) are in violation of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act, commencing with section 25249.5 of the Health and Safety Code ("Proposition 65"). In particular, the violation alleged by this Notice consists of types of harm that may potentially result from exposures to the toxic chemical Nitrous Oxide. This chemical was listed as causing developmental and reproductive toxicity on August 1, 2008.

The specific type of product that is causing exposures in violation of Proposition 65 is "Nestle Coffee Mate French Vanilla Cold Foam Creamer" (the "Product"). The reasonably foreseeable use of the Product results in exposures to Nitrous Oxide. The routes of exposure include (i) direct ingestion and/or inhalation when consumers ingest, inhale, or otherwise use the Product for its intended and/or unintended but foreseeable use, (ii) ingestion via hand to mouth contact after consumers touch, use, or handle the Product, (iii) ingestion when consumers place their hands in their mouths while using the Product, and (iv) inhalation when Nitrous Oxide from the Product accumulates in ambient airborne particles (e.g., dust) in the air in or around the Product that consumers breathe. The sales of this Product have been occurring since at least the past year, are continuing to this day, and will continue to occur as long as the Product subject to this Notice is sold to and used by consumers.

Proposition 65 requires that a clear and reasonable warning be provided regarding exposures to Nitrous Oxide caused by ordinary use of the Product. Nestle and Ralphs are in violation of Proposition 65 by failing to

provide such warnings to consumers. As a result of the sales of this Product, California consumers have been exposed to Nitrous Oxide without proper warnings.

Based on the allegations set forth in this Notice, Plaintiff intends to file a citizen enforcement lawsuit against Nestle and Ralphs unless they agree in a binding written instrument to: (i) immediately cease causing unwarned exposures to Nitrous Oxide; (ii) provide clear and reasonable warnings for past and ongoing exposures to Nitrous Oxide from the Product; and (iii) pay appropriate civil penalties based on the factors enumerated in California Health and Safety Code section 25249.7(b). If Nestle and Ralphs are interested in resolving this dispute without resort to litigation, please feel free to contact me. However, the parties cannot: (i) finalize any settlement until after the 60-day notice period has expired, nor (ii) speak for the Attorney General or any District or City Attorney who received the 60-day Notice. Therefore, while reaching an agreement with Plaintiff will resolve these claims, such agreement may not satisfy the public prosecutors.

Plaintiff can be contacted through his counsel, whose contact information is as follows:

Kevin J. Cole, Esq.
KJC Law Group, A.P.C.
9701 Wilshire Blvd., Suite 1000
Beverly Hills, CA 90212
Telephone: (310) 861-7797
e-Mail: kevin@kjclawgroup.com

This Notice also serves as a demand that Nestle and Ralphs 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 use of Nitrous Oxide in the Product; efforts to comply with Proposition 65 with respect to the use of Nitrous Oxide in the Product; communications with any person relating to Nitrous Oxide in the Product; and the length of time at which Nestle and Ralphs sold the Product into the California marketplace.

If you have any questions or wish to discuss any of the above, please contact me.

Sincerely,

Kevin J. Cole, Esq.
KJC Law Group, A Professional Corporation

See attached distribution list

Attachments:

Certificate of Merit
Certificate of Service
Proposition 65 Summary (to the alleged violator only)

Additional Supporting Information for Certificate of Merit (to the California Attorney General only)

310.861.7797 | kevin@kjclawgroup.com | www.kjclawgroup.com | @kjclawgroup
9701 Wilshire Blvd., | Suite 1000 | Beverly Hills, CA 90212 | 1055 E. Colorado Blvd., | Suite 500 | Pasadena, CA 91106

CERTIFICATE OF MERIT

I, Kevin J. Cole, hereby declare:

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

2. I am an 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 alleged exposure to the listed chemical that is the subject of the 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 violator 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 the information identified in Health and 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: April 25, 2025

Kevin J. Cole, Esq.
KJC Law Group, A Professional Corporation

CERTIFICATE OF SERVICE

I, Chen Wang, declare that I am over the age of 18 years, and am not a party to the within action. I am employed in the County of Los Angeles, California, where the mailing occurs; and my business address is 9701 Wilshire Blvd., Suite 1000, Beverly Hills, CA 90212.

On April 25, 2025, I served the following documents: **(1) 60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(d); (2) CERTIFICATE OF MERIT; (3) PROPOSITION 65: A SUMMARY; and (4) CERTIFICATE OF MERIT ATTACHMENT (served only on the Attorney General)** on the parties listed below by placing a true and correct copy thereof in a sealed envelope, addressed to the parties listed below and depositing it at my business address with the U.S. Postal Service for delivery by Certified Mail with the postage thereon fully prepaid:

Via Certified Mail

Nestle USA, Inc.
c/o Leanne Geale, Esq.
Executive Vice President & Group General Counsel
1812 N. Moore Street
Arlington, VA 22209

Nestle USA, Inc.
c/o C T Corporation System
330 N. Brand Blvd.
Glendale, CA 91203

Ralphs Grocery Company
c/o CSC – Lawyers Incorporating Service
2710 Gateway Oaks Dr., Suite 150 N
Sacramento, CA 95883

Ralphs Grocery Company
c/o General Counsel
1014 Vine Street
Cincinnati, OH 45202

On April 25, 2025, I served the California Attorney General (via website Portal) by uploading a true and correct copy thereof as a PDF file via the California Attorney General's website.

On April 25, 2025, I transmitted via electronic mail the above-listed documents to the electronic mail addresses of the City and/or District Attorneys who have specifically authorized email service and the authorization appears on the Attorney General's website.

See Attached Service List

On April 25, 2025, I served the following persons and/or entities at the last known address by placing a true and correct copy thereof in a sealed envelope and depositing it at my business address with the U.S. Postal Service for delivery with the postage thereon fully prepaid, and addressed as follows:

See Attached Service List

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

Executed on April 25, 2025 in Los Angeles, California.

Chen Wang

27 CCR Div. 4 Ch. 1 Art. 9 App. A

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

Currentness

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/P65*l*aw72003.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 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 say 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.

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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 Periods. 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 full and part-time 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[2] 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.

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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/p65*l*aw72003. 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

Credits

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.

History

1. New Appendix A filed 4-22-97; operative 4-22-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 17).

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2. Amendment filed 1-7-2003; operative 2-6-2003 (Register 2003, No. 2).

3. Change without regulatory effect renumbering title 22, section 12903 and Appendix A to title 27, section 25903 and Appendix A, including amendment of appendix, filed 6-18-2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 25).

4. Amendment filed 11-19-2012; operative 12-19-2012 (Register 2012, No. 47).

5. Amendment of appendix and Note filed 11-19-2014; operative 1-1-2015 (Register 2014, No. 47).

6. Amendment of Appendix A filed 8-23-2017; operative 10-1-2017 (Register 2017, No. 34).

7. Editorial correction of first paragraph (Register 2019, No. 17).

This database is current through 4/11/25 Register 2025, No. 15.

Footnotes

1 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.

2 See Section 25501(a)(4).

Cal. Admin. Code tit. 27, Div. 4 Ch. 1 Art. 9 App. A, 27 CA ADC Div. 4 Ch. 1 Art. 9 App. A

End of Document

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SERVICE LIST

The Honorable Nancy O'Malley Alameda County District Attorney 1225 Fallon Street, Room 900 Oakland, CA 94612	The Honorable Stacey Montgomery Lassen County District Attorney 220 South Lassen Street, Ste. 8 Susanville, CA 96130	The Honorable Candice Hooper San Benito County District Attorney 419 4th Street, Second Floor Hollister, CA 95203	The Honorable Gregg Cohen Tehama County District Attorney 444 Oak Street, Room L Red Bluff, CA 96080
The Honorable Terese Drabec Alpine County District Attorney 270 Laramie Street, PO BOX 248 Markleeville, CA 96120	The Honorable Jackie Lacey Los Angeles County District Attorney 211 West Temple Street, Suite 1200 Los Angeles, CA 90012	The Honorable Michael Ramos San Bernardino County District Attorney 303 West 3rd Street, 6th Floor San Bernardino, CA 92415-0502	The Honorable Eric Heryford Trinity County District Attorney P.O. Box 310 Weaverville, CA 96093
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The Honorable John Poyner Colusa County District Attorney 346 Fifth Street Colusa, CA 95932	The Honorable C. David Eyster Mendocino County District Attorney 100 North State Street, P.O. Box 1000 Ukiah, CA 95482	The Honorable Dan Dow San Luis Obispo County District Atty 1035 Palm Street, 4th Floor San Luis Obispo, CA 93408	The Honorable Jeff Reisig Yolo County District Attorney 301 Second Street Woodland, CA 95695
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The Honorable Gilbert Otero Imperial County District Attorney 940 West Main Street, Suite 102 El Centro, CA 92243	The Honorable Tony Rackauckas Orange County District Attorney 401 Civic Center Drive West Santa Ana, CA 92701	The Honorable James Kirk Andrus Siskiyou County District Attorney P.O. Box 986 Yreka, CA 96097	Office of the California Attorney General Proposition 65 Enforcement Reporting ATTN: Prop 65 Coordinator 1515 Clay Street, Suite 2000 Oakland, CA 94612-0550
The Honorable Thomas Hardy Inyo County District Attorney P.O. Drawer D Independence, CA 93526	The Honorable R. Scott Owens Placer County District Attorney 10810 Justice Center Drive, Suite 240 Roseville, CA 95678	The Honorable Krishna Abrams Solano County District Attorney 675 Texas Street, Suite 4500 Fairfield, CA 94533	
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The Honorable Keith Fagundas Kings County District Attorney 1400 West Lacey Boulevard Hanford, CA 93230	The Honorable Michael Hestrin Riverside County District Attorney 3960 Orange Street Riverside, CA 92501	The Honorable Birgit Fladager Stanislaus County District Attorney 832 12th Street, Suite 300 Modesto, CA 95354	
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