

### ATTORNEYS AT LAW

Tel: 619-629-0527 noam@entornolaw.com 225 Broadway, Suite 1900 San Diego, CA 92101

April 12, 2023

## Via Certified Mail

Tatcha, LLC c/o Amanda Garcia 330 N Brand Blvd Glendale, CA Sephora USA, Inc. c/o CSC- Lawyers Incorporating Services 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833

## Re: *Withdrawal of Proposition 65 Notice of Violation*

To Whom It May Concern:

Please take notice that Environmental Health Advocates, Inc. hereby withdraws its 60-Day Notice of Violation AG 2022-02828 a copy of which is enclosed with this letter.

Please do not hesitate to contact our office with any questions.

Sincerely,

Noon Slit

Noam Glick



ATTORNEYS AT LAW

Tel: 619-629-0527 noam@entornolaw.com jake@entornolaw.com craig@entornolaw.com 225 Broadway, Suite 1900 San Diego, CA 92101

November 29, 2022

Via Certified Mail:

Tatcha, LLC c/o Amanda Garcia 330 N Brand Blvd Glendale, CA Sephora USA, Inc. c/o CSC- Lawyers Incorporating Services 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833

# **Re: Proposition 65 Notice of Violation**

To Whom It May Concern:

We represent Environmental Health Advocates, Inc., an organization in the State of California acting in the interest of the general public. This letter serves as notice that the parties listed above 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 violations alleged by this notice consist of types of harm that may potentially result from exposures to the toxic chemical Titanium dioxide (airborne, unbound particles of respirable size) ("TiO2"). This chemical was listed as a carcinogen on September 2, 2011.

The specific type of product that is causing exposures in violation of Proposition 65 is powdered face makeup including but not limited to:

	Product Name	<b>Manufacturer</b>	Distributor/Retailer
1.	Tatcha the Silk Powder	Tatcha, LLC	Sephora USA, Inc.

The routes of exposure for the violations include inhalation by consumers. These exposures occur through the reasonably foreseeable use of the product. The sales of this product have been occurring since at least October 2021, 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 is provided with these products regarding the exposures to TiO2 caused by ordinary use of the product. The Parties

are in violation of Proposition 65 by failing to provide such warning to consumers and as a result of the sales of this product, exposures to TiO2 have been occurring without proper warnings.

Pursuant to Proposition 65, notice and intent to sue shall be provided to violators 60days before filing a complaint. This letter provides notice of the alleged violation to the parties listed above and the appropriate governmental authorities. A summary of Proposition 65 is attached.

EHA identifies Fred Duran as a responsible individual within the entity.

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

Sincerely,

### ENTORNO LAW LLP.

Noan Slich

Noam Glick Jake Schulte Craig Nicholas

### **CERTIFICATE OF MERIT**

I, Noam Glick, 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 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: November 29, 2022

Noan Slich

Noam Glick, Attorney at Law

### **CERTIFICATE OF SERVICE**

I, Jordyn Naylor, 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 San Diego, California, where the mailing occurs; and my businessaddress is 225 Broadway, 19<sup>th</sup> Floor, San Diego, California 92101.

On November 29, 2022, 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 each party and depositing it at mybusiness address with the U.S. Postal Service for delivery by Certified Mail with the postage thereon fullyprepaid:

#### Via Certified Mail

Tatcha, LLC c/o Amanda Garcia 330 N Brand Blvd Glendale, CA Sephora USA, Inc. c/o CSC- Lawyers Incorporating Services 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833

On November 29, 2022, 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 November 29, 2022, 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 e-mail serviceand the authorization appears on the Attorney General's web site.

### See Attached Service List

On November 29, 2022, 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 trueand correct.

Executed on November 29, 2022, at San Diego, California.

Jordyn Naylor

### **Appendix A**

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA PROTECTION AGENCY THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACTION 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the office of Environmental Health Hazard Assessment, the lead and Toxic Enforcement Act 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 law. The reader is directed to the statue and its implementing regulations (See citations below) for further information.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. 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 Regulations, Sections 250000 through 27000.

# WHAT DOES PROPOSITION 65 REQUIRE?

*The "Governor's List"* Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 725 chemicals have been listed as of November 16, 2001. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release, or otherwise engage in activities involving those 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. 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 is will effectively reach the person before he or she is exposed. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of the listing of the chemical.

### 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. Discharges are exempt from this requirement if they occur less than twenty months after the date of the listing of chemical.

### **DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?**

Yes. The law exempts:

*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.

### Exposures that pose no significant risk of

*cancer.* For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business 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 for more than 250 listed carcinogens.

*Exposures that will produce no observable reproductive effect at 1,000 times the level in question.* For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at

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 (NOEL)," divided by a 1,000- fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect.

## Discharge that do not result in a "significant amount" of the listed chemical entering into 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 list chemical has not, does not, or will not enter any drinking water source, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount; expect an amount that would meet the "no significant risk" or "no observable effect" test if an individual were exposed to such an amount in drinking water.

# HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought be the Attorney General, any district attorney, or certain city attorneys (those in cities with a population exceeding 750,000). Lawsuit 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. A notice must comply with the information and procedural requirements specified in regulations (Title 27. California Code of Regulations, Section 25903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of 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 of law to stop committing the violation.

### FOR FURTHER INFORMATION....

Contact the Office of Environmental Health Hazard Assessment=s Proposition 65 Implementation Office at (916)445-6900

# SERVICE LIST

The Honorable Nancy O'Malley	The Honorable Stacey Montgomery	The Honorable Candice Hooper	The Honorable Gregg Cohen
Alameda County District Attorney	Lassen County District Attorney	San Benito County District Attorney	Tehama County District Attorney
1225 Fallon Street, Room 900	220 South Lassen Street, Ste. B	419 4th Street, Second Floor	444 Oak Street, Room L
Oakland, CA 94612	Susanville, CA 96130	Hollister, CA 95203	Red Bluff, CA 96080
The Honorable Terese Drabec	The Honorable Jackie Lacey	The Honorable Michael Ramos	The Honorable Eric Heryford
Alpine County District Attorney	Los Angeles County District Attorney	San Bernardino County District Attorney	Trinity County District Attorney
270 Laramie Street, PO BOX 248	211 West Temple Street, Suite 1200	303 West 3rd Street, 6th Floor	P.O. Box 310
Markleeville, CA 96120	Los Angeles, CA 90012	San Bernardino, CA 92415-0502	Weaverville, CA 96093
The Honorable Todd Riebe	The Honorable David Linn	The Honorable Bonnie Dumanis	The Honorable Tim Ward
Amador County District Attorney	Madera County District Attorney	San Diego County District Attorney	Tulare County District Attorney
708 Court Street	209 West Yosemite Avenue	330 W. Broadway Street	221 South Mooney Boulevard, Rm 224
Jackson, CA 95642	Madera, CA 93637	San Diego, CA 92101	Visalia, CA 93291-4593
The Honorable Michael Ramsey	The Honorable Edward Berberian	The Honorable George Gascon	The Honorable Laura Krieg
Butte County District Attorney	Marin County District Attorney	San Francisco County District Attorney	Tuolumne County District Attorney
25 County Canter Drive	3501 Civic Center Drive, Room 130	850 Bryant Street, Room 322	423 North Washington Street
Orovilla, CA 95965	San Rafael, CA 94903	San Francisco, CA 34103	Sonora, CA 95370
The Honorable Barbara Yook	The Honorable Thomas Cooke	The Honorable Tori Verber Salazar	The Honorable Gregory Totten
Calaveras County District Attorney	Mariposa County District Attorney	San Joaquin County District Attorney	Ventura County District Attorney
991 Mountain Ranch Road	5101 Jones Street, P.O. Box 730	222 East Weber Avenue, Room 202	800 South Victona Avenue
San Andreas, CA 95249	Mariposa, CA 95338	Stockton, CA 35201	Ventura, CA 93009
The Honorable John Poyner	The Honorable C. David Eyster	The Honorable Dan Dow	The Honorable Jeff Reisig
Colusa County District Attorney	Mendocino County District Attornay	San Luis Obispo County District Atty	Yolo County District Attorney
346 Filth Street	100 North State Street, P.O. Box 1000	1035 Palm Street, 4th Floor	301 Second Street
Colusa, CA 95932	Ukiah, CA 95482	San Luis Obispo, CA 33408	Woodland, CA 95895
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The Honorable Vern Pierson	The Honorable Tim Kendall	The Honorable Jeffrey Rosen	The Honorable James Sanchez
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778 Pacific Street	P.O. Box 617	70 West Hedding Street, West Wing	915 I Street, 4th Floor
Placerville, CA 95667	Bridgeport, CA 93517	San Jose, CA 95110	Sacramento, CA 95814
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2220 Tulara Street, #1000	P.O. Box 1131	701 Ocean Street, Room 200	1200 Third Avenue, Suite 1620
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The Honorable Dwayne Stewart Glenn County District Attorney P.O. Box 430 Willows, CA 95988	The Honorable Allison Haley Napa County District Attornay 1127 First Street, Suite C Napa, CA 94559	The Honorable Stephen Carlton Shasta County District Altorney 1355 West Street ReddIng, CA 96001	The Honorable Dennis Herrera Office of the City Attorney, San Francisco 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102
The Honorable Maggie Fleming	The Honorable Clifford Newell	The Honorable Lawrence Allen	The Honorable Richard Doyle
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825 5th Street, Fourth Floor	201 Commercial Street	100 Courthouse Square	200 East Santa Clara Street, 18th Floor
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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	The Honorable R. Scott Owens	The Honorable Krishna Abrams	
Inyo County District Attorney	Placer County District Attorney	Solano County District Attorney	
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The Honorable Keilh Fagundas	The Honorable Michael Hestrin	The Honorable Birgit Fladager	
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Hanford, CA 93230	Riverside, CA 92501	Modesto, CA 95354	
The Honorable Donald Anderson	The Honorable Anne Marie Schubert	The Honorable Amanda Hopper	
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# **E-Mail Service List**

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