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State of California
DEPARTMENT OF JUSTICE



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December 16, 2020

See attached list of addressees

RE: Submitting Confidential Supporting Information for a 60-Day Notice

Dear Proposition 65 Plaintiffs' Counsel,

As part of the Attorney General's responsibility to review 60-day notices of violation sent under California's Safe Drinking Water and Toxic Enforcement Act, commonly known as "Proposition 65," the Attorney General's Office reviews approximately two thousand notices each year. The majority of notices are for consumer products, including food. Each notice contains a certificate of merit. Attached to the Attorney General's copy of the certificate of merit is confidential factual information ("CFI") "sufficient to establish the basis of the certificate of merit." (Health & Saf. Code, § 25249.7, subd. (d)(1).) We are writing to all attorneys who have sent notices during the past twelve months to ask that you include a summary page or pages at the beginning of the CFI to assist with our review. Our request does not alter or supersede any statutory or regulatory requirements.

Specifically, for every 60-day notice that alleges violations based on sales of a consumer product, including food, we ask that you include a summary of the CFI at the beginning of your submission to the Attorney General's Office. If you upload 60-day notices, which is our preference, then the summary should be the first page(s) of the .pdf file with the confidential supporting information. If you mail or personally serve the notice, then the summary should be at the top of the confidential information attached to the certificate of merit. The summary should contain the following information:

- a. The name of the product and, if it is not apparent, a brief explanation what the product is.
- b. The date(s) and location(s) where the product was purchased. If the product was purchased on the internet, the name of the site and the url where it was purchased.

- c. The component of the product that is causing the exposure. For example, if the exposure occurs from the plastic-coated handle of a tool, or from the buckle of a belt, the summary should make this clear.
- d. The results of any analytical testing of the product, including the specific portion of the product tested, the type of test conducted, the units used for reporting, and the limits of quantitation and detection.
- e. For food products and other products that people ingest (e.g., drinks, supplements), the estimated serving size in grams or milliliters, number of servings per day, total daily consumption in grams or milliliters, and the estimated daily exposure using these amounts. If the serving size and number of servings is from the label, please provide a photo of the label or explain that it is from the label. If the serving size and number of servings is based on other information, please describe the basis for that information. Please note that statements of daily consumption should be based on the "average consumer" of the product.
- f. For all other consumer products, if the alleged exposure is to a chemical for which there is a regulatory No Significant Risk Level ("NSRL") or Maximum Allowable Dose Level ("MADL") in California Code of Regulations, title 27, sections 25705 or 25805, the exposure amount calculated by your expert that demonstrates that the defendant will not be able to prove its affirmative defense under the NSRL and/or MADL.
- g. If the 60-day notice relates to one or more previous notices, an explanation of the relationship between the notices and the Attorney General Notice Number for each of the related notices. (E.g., "Supersedes 2020-08888," or "Adds supplier for Notice 2020-09999.")

We have attached a template you can use for the summary, although it is not necessary to use the template. We also note that, when you submit CFI to our office, you do not need to submit discussion, articles, or reports about the *type of harm* caused by a listed chemical, since once a chemical has been listed as a chemical known to cause cancer or reproductive toxicity, the harm is established for purposes of Proposition 65. Moreover, if the CFI for multiple notices contains the same *published articles* or *published reports*, or the same expert's *curriculum vita*, it is acceptable to submit the materials once and then cross-reference the materials in subsequent notices using the Attorney General Notice Number for the original notice. Laboratory or expert reports prepared for products identified in a notice, however, must be included in the CFI for each notice that relates to the product.

Proposition 65 Plaintiffs' Counsel
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As we mentioned above, nothing in this letter alters or supersedes any statutory or regulatory requirement for 60-day notices, certificates of merit, or for the CFI submitted to the Attorney General's Office. If you have any questions, please contact us by sending your inquiry to prop65@doj.ca.gov. Thank you in advance for your cooperation.

Sincerely,

/s/ Harrison Pollak

HARRISON M. POLLAK
Supervising Deputy Attorney General

For XAVIER BECERRA
Attorney General

Enclosure

SF1994IN0809

Sample Template: Summary Page for Consumer Product Notices

1. Name of each product and description of how it is used:
2. Date and location where each product was purchased and, if applicable, the address where it was delivered. For products purchased online, provide the url.
3. The component of the product causing the exposure and its material:
4. The type of test conducted:
5. The results of the testing, including the units, and the limits of detection and quantification. For multiple results, provide a table.
6. For food products, the daily serving size used to estimate the exposure and the basis for the serving size (e.g., NHANES, label, survey, other):
7. The daily exposure estimated by the expert that demonstrates that the defendants will not be able to prove an affirmative defense, including any calculations and the basis for assumptions that underlie the calculations:
8. If the notice is a supplemental or amended notice, the date and number of the prior notice(s), and the relationship between the new and the prior notices:

List of Addressees

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