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## **PROPOSITION 65 60-DAY NOTICE**

**RESPONDING WITH CONFIDENCE**

### **WHAT IS A PROPOSITION 65 60-DAY NOTICE?**

- Proposition 65 is a unique California law that carries penalties of up to \$2500 per day for companies that fail to provide certain warnings.
- Private citizen “bounty hunters” can bring enforcement lawsuits under Proposition 65. These bounty hunters, however, must send a 60-day notice of alleged violation before they can file a lawsuit.
- Although the 60-day notice must contain information identifying a specific product that causes an exposure to a listed chemical, the notice also covers the broader “product category” of which the specifically noticed product is a part (e.g. “jewelry”).
- The 60-day notice is designed to give companies 60 days to investigate the alleged violation and take corrective action.
- Only government prosecutors such as the Attorney General and District Attorney may file Proposition 65 enforcement lawsuits without serving a 60-day notice.

### **RESPONDING TO A PROPOSITION 65 60-DAY NOTICE**

- Contact defense counsel early in the notice period to see if a lawsuit can be avoided.
- Consider consulting with experts to determine whether the alleged listed chemical in the product causes a Proposition 65 exposure.
- Consider contacting the supplier of the specifically noticed product to determine whether it contains listed chemicals and/or tender defense and indemnity to the supplier.
- After consulting with counsel, consider communicating with other suppliers in the product category to determine whether those suppliers’ products contain listed chemicals.
- After consulting with defense counsel, consider requesting test results showing compliance with Proposition 65 from all suppliers of products within the noticed product category.

### **COMMON PROPOSITION 65 DEFENSES**

- Defendant did not cause a “knowing and intentional” exposure to a listed chemical in violation of Proposition 65.
- Defendant did not cause an “exposure” to a listed chemical in violation of Proposition 65.
- Defendant has cured any alleged violation within the 60-day notice period.
- Proposition 65 is preempted by conflicting federal law.

### **DEALING WITH THE PRIVATE PLAINTIFF**

- Private “bounty hunters” are generally seeking three things: (1) Product warnings; (2) Civil penalties; and (3) Plaintiff’s attorney’s fees.
- Companies or their counsel should consider contacting the private plaintiff in the 60-day notice period to discuss any corrective steps taken and to discourage the filing of a lawsuit.
- Short of a complete defense of the litigation, Proposition 65 cases are often resolved through consent judgments or settlement agreements

### **CONTACT US**

- Each Proposition 65 case is unique. The issues identified above are neither exhaustive, nor a substitute for seeking legal advice in responding to any given 60-day notice. Counsel experienced in responding to 60-day notices and defending Proposition 65 lawsuits can help mitigate exposure to the broad remedies available to plaintiffs under the law.