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March 26, 2021

Monet Vela  
Office of Environmental Health Hazard Assessment  
1001 I Street, 23rd Floor  
P. O. Box 4010  
Sacramento, California 95812-4010

RE: Proposed Amendments to Article 6, Clear and Reasonable Warnings Short-Form Warnings

Der Ms. Vela:

On behalf of Caliva, one of the largest cannabis companies in the state, we wish to offer the following public comments relative to the proposed amendments referenced above.

Caliva is engaged in one of the most regulated and consumer safety-focused industries in the state. Current law in the cannabis industry imposes robust warning requirements to ensure that consumers have abundant information in hand before making a decision to purchase a product. These warnings include reproductive health warnings for both pregnant and breastfeeding persons, child safety warnings and stringent protections against misleading health claims. Caliva subscribes to the commitment to full regulatory compliance, especially as it relates to consumer safety.

While we would assert that current statute is already more rigorous than Proposition 65, we are concerned for three reasons that under the Proposition 65 framework, we would be facing unnecessary challenges for our consumers and ourselves that our governing statutes do not similarly create.

**Warning label “real estate:”** As already noted, current law for cannabis places very specific requirements on manufacturers to include labels that highlight specific health warnings as well as other information, including:

- Unique identifier linked to a testing certificate of analysis
- Product manufacturer information
- Batch numbers
- Concentration levels of THC and/or CBD
- Expiration or “best by” date
- Universal cannabis symbol.

We are also required to include the information established in the current Proposition 65 short form warning regulations. All of this information must be placed on a label that resides on a product that is often substantially less than 5 square inches.

This overabundance of information effectively crowds all of the warnings to the point that they become the visual equivalent of “white noise.” Ultimately, all of the verbiage on the label will be so small and dense that it will be meaningless to the consumer. The effect will be to seriously undermine the public policy goals of both Proposition 65 and the cannabis laws.

Because cannabis products already have expansive warning requirements, we submit that OEHHA should not increase the Proposition 65 verbiage on short form warning labels. We further submit that while we can speak authoritatively about cannabis, we know that other industries face similar challenges. Because of that, we caution OEHHA against further marginalizing Proposition 65’s effectiveness by crowding more and more language onto small labels.

**Explicit mention of one chemical:** The enforcement of Proposition 65 is mostly in the hands of the private legal sector. The experience of the business community, and the cannabis community in particular, is that this private right of action authority is often aggressively pursued for reasons that are financially motivated and not altruistically dedicated to the state’s public policy goals.

Adding a requirement to identify one chemical known to cause cancer or reproductive harm opens new opportunities for private enforcers to seek action against a business that explicitly names one chemical while not naming others. The burden is on the business to choose the right chemical to name because the result will be that private enforcers will challenge that the business made the wrong selection and that the consumer safety is jeopardized because the wrong chemical was named. While the business’ selection might be validated ultimately, the cost of defending its choice will place an unnecessary burden with substantial cost consequences on the business.

This requirement on the cannabis industry is unnecessary because of the expansive testing requirements on those products and the obligation to make those test results easily accessible to all consumers.

**Timing:** We share the broader concern of the business community that these changes come very close on the heels of the last round of short form warning regulatory changes. While the cannabis industry has not been subject to Proposition 65 regulations for very long, the individual companies arose at the time the current short form warning regulations were in place and created their packaging and labeling in part to comply with

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those regulations. These proposed changes will force the industry to engage in the very expensive revamping of labels on a very wide variety of products at a time that regulatory ramp up under cannabis laws is already costly.

In addition, the cannabis industry suffers from the viability of a substantial black market. Illicit operators have decided that they prefer to risk legal consequences than to abide by the raft of regulatory requirements and taxation obligations that add heavy costs to the product. The state and the legal industry have been working fervently to eradicate that black market through enforcement and through regulatory relaxation where possible. When other agencies myopically expand their regulatory footprint, they send the black market eradication effort backwards and more illicit operators are discouraged from becoming legal.

We thank you for your favorable consideration of these comments.

Sincerely,



Rand Martin