SIDLEY

SIDLEY AUSTIN LLP
1999 AVENUE OF THE STARS
17TH FLOOR
LOS ANGELES, CA 90067
+1 310 595 9500
+1 310 595 9501 FAX

+1 310 595 9662
ALALLY@SIDLEY.COM

AMERICA • ASIA PACIFIC • EUROPE

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Monet Vela
Office of Environmental Health Hazard Assessment
1001 I Street, 23rd Floor
P.O. Box 4010
Sacramento, CA 95814

Re: Comment to Notice of Proposed Rulemaking: Amendments to Article 6, Clear and Reasonable Warnings Short-form Warnings

Dear Ms. Vela:

I write on behalf of a client in response to OEHHA's request for comments on the proposed rulemaking to amend the short-form warning regulations in Section 25601 *et seq.,* Title 27 of the California Code of Regulations. My client joins in the comments submitted by the California Chamber of Commerce, Consumer Brands Association, and California Retailers Association. I write separately to address a single issue for clarification.

In its Initial Statement of Reasons, OEHHA notes: "As with other safe harbor warnings, including those on consumer products other than food, where a chemical is both a carcinogen and reproductive toxicant the level of exposure may require a warning for one endpoint but not the other. In this scenario a warning should be given only for the endpoint requiring a warning." January 8, 2021 ISOR at p. 14. My client agrees that Proposition 65 does not require a company doing business in the state of California to provide a warning for an end point for which there is no exposure above a safe harbor level established under Tit. 27, Cal. Code Regs. § 25707, 25709, and 25805.

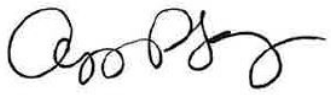
However, this statement in the ISOR might be misinterpreted by private enforcers as an alternative basis for issuing a notice of violation pursuant to Cal. Health & Safety Code § 25249.7(d)(1), or other action, against a company providing a Proposition 65 safe harbor warning as to two endpoints where the private enforcer's limited test data shows that a warning as to one of the two endpoints is not required. That type of litigation should not be encouraged or permitted.

Limiting warnings to certain endpoints in this way would effectively mandate testing and evaluation for each endpoint, but no such requirement is found in Proposition 65. Indeed, OEHHA has already acknowledged that companies doing business in the state of California are not required to conduct exposure assessments in order to comply with Proposition 65. *See*

September 2, 2016 FSOR at p. 196-197. Limiting warnings to certain endpoints in this way would also be inconsistent with the position that OEHHA took in creating the current safe harbor warning regime. In that rulemaking, OEHHA said that companies may be required to warn based on "knowledge of an exposure that requires a warning through the news media, its customers or a trade association." September 2, 2016 FSOR at p. 55. Information from such sources is invariably general and not commensurate with the type of precise product-specific exposure assessment required to evaluate a product against the safe harbor level for each endpoint.

OEHHA should clarify its comment above in the January 8, 2021 ISOR at p. 14 to note: (i) Proposition 65 does not require companies providing a safe harbor warning to determine the level of exposure before identifying the end-points for which a warning is being provided, and (ii) the pending proposed rulemaking should not be interpreted to mean that a Proposition 65 warning that otherwise complies with the safe harbor warning regulations is deficient or unlawful for reasons not stated in the text of the regulations.

Very truly yours,



Amy P. Lally
Partner