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Dear Monet Vela,

On behalf of the following undersigned institutions representing environmental health, environmental justice, health professionals, progressive businesses, and public health and labor advocates, we appreciate the opportunity to provide comments regarding OEHHA's proposed modifications to Article 6 of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65). We thank OEHHA for protecting California's residents by taking steps to ensure that Article 6 provisions for short form warnings for consumer product exposures clearly and effectively provide Californians with information about toxic exposures. We applaud OEHHA for many of the changes already implemented to the Article 6 short form warnings - particularly the listing of at least one chemical name on short form warnings. This modification is in line with the results from the UC Davis Extension Collaboration Center's 2015 study on the effectiveness of Prop 65 warnings, that showed that a majority of survey respondents preferred warnings with at least one chemical name. We believe that providing consumers with more information is necessary to facilitate informed decision making and to protect public health. While we commend OEHHA for taking the necessary actions to amend Article 6 to reduce the over-use of short form warnings, we believe that two of the proposed modifications to the short form warnings are in contradiction to the intent of providing a short form warning option and should be revised. Below, we discuss our reasoning for why these two proposed modifications should be reconsidered.

**The revised maximum label size for short form warnings of 12 square inches is too large, OEHHA should retain the previous 5 square inch cutoff.**

We are disappointed that the proposed revisions to the short form warning regulation, failed to consider our prior comments (March 24, 2021, Center for Environmental Health) regarding the maximum label space of products where short form warnings are allowed. We support OEHHA allowing the use of the short form warning only on products with 5 square inches or less of label space. The proposed revision to Section 25602(a)(4)(A), increasing the maximum label size for short form warnings to 12 square inches is too large an area and permits short form

warnings on products with sufficient label space to allow for the full-length warning content. Allowing short form warnings on products with up to 12 square inches of label space goes against the purpose of the proposed rulemaking in reducing the unnecessary use of short-form warnings and “to limit the use of the safe harbor short form warning to small products.” By allowing the short form warning on products with sufficient label space to accommodate the full-length warning, the proposed amendment will deny consumers full access to information necessary for informed decision making.

We also noted that the proposed modification to increase the maximum label size does not include a requirement for a minimum font size. We urge OEHHA to require a 10-point minimum font size to allow the average consumer to easily read the Prop 65 warning on a label. Not requiring a minimum font size while increasing the maximum label size is contradictory to the intent of allowing short form warnings, given that with more label space manufacturers should be required to provide a warning in a font size that is accessible to most consumers. We implore OEHHA to commit to a minimum font size that is reasonable for the average consumer.

**We do not support the use of short-form warnings for internet and catalog warnings and believe that it is inconsistent with the intent of providing an option for short form warnings.**

In the original proposal to amend Article 6, Section 25602(b) and (c), OEHHA removed the option to use short form warning content on websites and online catalogs. We are dismayed that this change has been revoked and that short form warnings are again permitted online. OEHHA states that the decision to allow short form warnings on websites and online catalogs provides “consistency along the supply/distribution chain.” However, this consistency comes at the expense of consumers who look to websites and online catalogs for more detailed information on potential health concerns associated with a product. Given that there has been a significant shift to online purchasing during the COVID 19 pandemic, it is imperative that consumers be able to access full and complete health protective information on a product website or online catalog. The move towards online retail will continue beyond the pandemic as online purchasing becomes the standard for consumers. Without the option to access a full-length warning online, consumers are left with incomplete information and greater confusion. Consumers are increasingly interested in detailed health information on the products they use in their everyday lives, which is evident from the amount of traffic that OEHHA’s Prop 65 website receives. We should not be backsliding towards providing less information to consumers, especially in web catalogs and online where there is no space limitation.

As described in both its Initial and Final Statement of Reasons during the 2016 regulations, OEHHA was clear that the short form warning was only intended to be used for on-product labels. Online and in web catalogs, manufacturers already provide detailed information (product size, weight, material composition, etc.) to retailers about their products. It is not inconsistent to demand that manufacturers provide this same level of detail regarding the potential health impacts associated with their products and it is imperative that equitable

access to any details related to potential health concerns associated with the use of these products be provided to the consumer during the selection process and before products are purchased. Manufacturers are already obliged to provide detailed product information to retailers including full-length Prop 65 warning content. Retailers don't make up the information that goes up on their website and thus don't bear the burden for providing this information to consumers. It is imperative that consumers be given access to the information necessary to make informed decisions to protect their health - where no space limitations are present, this information should include full-length warning content. If OEHHA allows the use of short form warning online and in web catalogs, providing less information to consumers will quickly become the industry norm, undermining the intent of the law. We urge you to consider the original purpose of the short form warning provision to be used strictly for very small products (5 square inches or less) and require full warnings online and in web catalogs if companies seek safe harbor protections.

Overall, we are in support of OEHHA taking steps forward in amending Article 6, but the proposed modifications in allowing short form warnings online and on products with up to 12 square inches of label space are against the intent of the warnings to provide clear and reasonable information to consumers. We believe that these two proposed modifications to the short form warnings, will continue to allow short form warnings to be used in situations where they are not warranted or appropriate. We urge OEHHA to address our concerns by not adopting the larger maximum label size and by not permitting short form warnings on websites and online catalogs.

Given that Proposition 65 was passed by California voters due to their concern about being exposed to toxic chemicals in the water they drink, the air they breathe, the products they use and the food they eat, we are enthusiastically in favor of this effort to afford consumers their legal right to know. Without these changes, use of the short-form warning will continue to be in contravention of the intent of the statute and OEHHA's adoption of the 2016 regulations — that warnings communicate meaningful information about chemical exposures to consumers, and that short-form warnings be used only on labels for small products that cannot accommodate the full-length warning content described in Section 25603(a)2. Thank you for the opportunity to provide these comments.

Sincerely,

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