

California's Proposition 65: A Guidebook and Resource



BINGHAM McCUTCHEN

Legal insight. Business instinct.

Introduction

Since its enactment over 15 years ago, California's Proposition 65 has distinguished itself as an unusual statute that requires the business community's careful attention. Its distinguishing features include:

- ❑ The penalty for non-compliance is \$2,500 per violation per day. Because there are no published decisions defining the term "violation" or firmly establishing the law's statute of limitations, plaintiffs often demand hundreds of thousands of dollars – if not more – to settle a case.
- ❑ Private citizens, as well as the Attorney General and local district attorneys, may sue to enforce the law. A business is likely to face an environmental organization or a "bounty-hunting" plaintiff rather than or in addition to a public prosecutor. Private and public plaintiffs alike seek attorneys fees as well as penalties.
- ❑ Proposition 65 requires very little showing from plaintiffs – and no showing of actual harm – before the burden shifts to the defending company to show that it has not violated the law.
- ❑ Proposition 65 applies to very small levels of chemicals – levels that in some cases are a thousand times lower than those permitted by other laws.
- ❑ The California Supreme Court has said that Proposition 65 is to be construed "broadly to accomplish [its] protective purpose." Thus, close cases may be decided against the regulated community.
- ❑ Because it was originally enacted by the voters, Proposition 65 can be amended only by a two-thirds vote of the legislature, and only if the amendment furthers the general purposes of the law.
- ❑ Proposition 65 claims are often combined with other pro-plaintiff statutes such as California's unfair competition and consumer protection laws. These complaints become difficult to defeat on procedural grounds or on summary judgment.

Overview

California's Safe Drinking Water and Toxic Enforcement Act of 1986 is commonly referred to as "Proposition 65." It applies to people doing business in California, including those who ship products into the state. The only entities exempted are those with fewer than ten employees, governmental units, and anyone operating a public water system.

Under Proposition 65, the State maintains a long list of chemicals that are either carcinogens or reproductive toxicants. Many chemicals are on both lists. Basically, Proposition 65 prohibits businesses from:

- ❑ **discharging** listed chemicals to "sources of drinking water" in the state; or
- ❑ **exposing** people in the state to listed chemicals without prior **warning**.

Although not all discharges or exposures to listed chemicals are prohibited, any potential discharge or exposure to a listed chemical should prompt a review of the applicable regulations.

The most recent versions of the lists are contained in the Proposition 65 regulations. Be sure to review the most current lists, which are available on the website of the State's Office of Environmental Health Hazard Assessment ("OEHHA") at **www.oehha.org**.

Lawsuits alleging violations of Proposition 65 frequently also include claims under California's unfair competition and consumer protection laws. These statutes are some of the toughest in the country and offer plaintiffs a variety of procedural advantages. These laws are composed of the Unfair Business Practices Act (California Business & Professions Code § 17200); its counterpart provision on false advertising, the False Advertising Act (California Business & Professions Code § 17500); and the Consumers Legal Remedies Act (California Civil Code § 1750).

Please note: This is only a general introduction to Proposition 65. It cannot provide you with legal advice that takes account of all the idiosyncrasies of your company's products or operations or the details of the law regarding Proposition 65. If you believe your products or operations raise Proposition 65 compliance issues, you may wish to consult legal counsel.

The List of Chemicals

Proposition 65 requires the State of California to publish and revise, at least once each year, a list of chemicals known to the State to cause cancer or reproductive harm. The chemicals listed trigger Proposition 65's warning requirement and discharge prohibition. If a chemical is not on the list, Proposition 65 does not apply. Hundreds of chemicals are listed.

How are chemicals added to the list? A chemical is added to the Proposition 65 list if:

- ❑ The State's qualified experts review scientific studies and identify the chemical as known to the State to cause cancer or reproductive toxicity. The State has established a Science Advisory Board and two committees – the Carcinogen Identification Committee and the Developmental and Reproductive Toxicant Identification Committee – to act as its qualified experts.
- ❑ OEHHA determines that an authoritative body identified by the Science Advisory Board has formally identified the chemical as causing cancer or reproductive harm.
- ❑ OEHHA determines that a state or federal agency has formally required the chemical to be identified or labeled as causing cancer or reproductive toxicity.

What information can I find on the list? The list provides the name of each chemical covered by Proposition 65. In addition, the list provides a Chemical Abstracts Service ("CAS") registry number for each chemical and the date when the chemical was initially listed. Given the similarity of many chemical names, the CAS number makes it easier to verify the identity of a listed chemical. The date on the list allows you to determine when the warning requirement and the discharge prohibition takes (or took) effect. The warning requirement takes effect 12 months after the date of listing; the discharge prohibition takes effect 20 months after the date of listing.

Is the list current? Chemicals are frequently added to, and sometimes removed from, the list. Be sure to review the most current list at: www.oehha.org.

The Discharge Prohibition

Proposition 65 prohibits businesses with 10 or more employees from knowingly discharging or releasing a listed chemical into the environment (whether air, land or water) where the chemical passes or probably will pass into a source of drinking water. This prohibition initially was understood to refer to pollution of streams, lakes and groundwater; however, the California Supreme Court, in *People v. Superior Court (American Standard)*, 14 Cal. 4th 294 (1996), expanded the coverage of Proposition 65 to include devices, such as faucets and pipes that convey drinking water for consumption, within the meaning of “source of drinking water.”

There are four primary exemptions from the discharge prohibition:

- ❑ **Time period after listing.** The discharge prohibition does not apply to a chemical until 20 months after the chemical is listed. California Health and Safety Code (“HSC”) § 25249.9(a). This is not relevant for most of the over 650 chemicals already on the list, but it applies as chemicals are added to the list.
- ❑ **Knowing discharge.** The discharge prohibition applies only to those persons who knowingly discharge or release a listed chemical. HSC § 25249.5. “Knowingly” refers merely to knowledge of the discharge or release and not to knowledge that the discharge or release violates the Proposition 65 discharge prohibition. 22 California Code of Regulations (“CCR”) § 12102. In other words, if you know that your company is discharging a listed chemical in any amount, the “knowing” requirement may be satisfied.
- ❑ **Stormwater runoff.** The regulations exempt listed chemicals in stormwater runoff, so long as the listed chemical “is not the direct and immediate result of the business activities conducted at the place from which the runoff flows.” 22 CCR § 12401(c). Runoff from parking lots is specifically exempted. *Id.*
- ❑ **Significant amount.** There is no violation if the discharge or release will not cause any “significant amount” of the chemical to enter any source of drinking water and the discharge or release is in conformity with “all other laws.” HSC § 25249.9(b).

But the question of what constitutes a “significant amount” is quite tricky. The statute defines the term generally to mean “any detectable amount,” but allows a “detectable amount” to be discharged so long as it meets certain exposure criteria:

- **Carcinogens.** If the chemical is listed as a carcinogen, then the discharger must be able to show that the amount of chemical entering a source of drinking water would pose no significant risk of cancer assuming that an individual is exposed to that amount in drinking water for a 70-year lifetime. HSC §§ 25249.11(c), 25249.10(c); 22 CCR § 12721(c).
- **Reproductive Toxicants.** If the chemical is listed as a reproductive toxicant, the amount entering a source of drinking water must be so low that, if it were multiplied by 1,000, it would have no observable effect on an individual exposed to that amount in drinking water. HSC §§ 25249.11(c), 25249.10(c); 22 CCR § 12801(c).

The burden is on the discharger to prove these facts, which often requires extensive technical analysis. HSC § 25249.9. For some chemicals, the State has established regulatory levels that do not exceed the exposure criteria. But for most chemicals it has not. In an enforcement action, the plaintiff has the burden of proving that a listed chemical has entered or probably will enter a source of drinking water. The discharger then has the burden of proving that the discharge will not cause a listed chemical to enter drinking water in a significant amount.

The Warning Requirement

Proposition 65 prohibits businesses with 10 or more employees from knowingly and intentionally exposing any individual in California to a listed chemical without first giving a clear and reasonable warning.

- ❑ **Knowledge of the exposure.** The term knowingly has the same meaning as for the discharge prohibition. If you know that exposure to any detectable amount of a listed chemical is occurring, that may be enough to trigger Proposition 65. 22 CCR § 12102(n). The term intentionally is not defined in the statute or in the regulations, but exposures caused by accident, without intention or negligence, do not violate the warning requirement.
- ❑ **Exemptions.** All exposures to detectable amounts of listed chemicals require a prior warning unless the exposure is specifically exempted under the statute. There are four general exemptions:
 - **Time period after listing.** Exposures that take place less than 12 months after a chemical is listed are exempted. Note that this “grace period” is shorter than the 20 months allowed under the discharge prohibition.
 - **Federal preemption.** If federal law governs warning in a manner that preempts state authority, then no Proposition 65 warning is required. The courts have considered a number of claims that various federal laws preempt Proposition 65. For the most part, the courts have held that the federal laws in question do not preempt Proposition 65 except for the federal Occupational Health and Safety Act and the federal Hazard Communication Standard (“HCS”). Courts have determined that the federal HCS preempts the Proposition 65 warning requirement as it applies to workplace exposures except to the extent that Proposition 65 is incorporated in the State Plan approved by the federal Occupational Safety and Health Administration (“OSHA”).
 - **Out-of-state manufacturers.** When OSHA approved California’s incorporation of Proposition 65 into the State Plan by way of the California HCS, OSHA made it clear that California cannot enforce its State Plan against out-of-state manufacturers who produce products for use in a California workplace. Out-of-state manufacturers are subject to the federal HCS or, if the manufacturer is producing in an authorized state, then the hazard communication requirements of that state’s OSHA-approved state

plan. Nevertheless, if products are manufactured outside of California, and then reformulated, repackaged or relabeled in California for sale within the state, then the California formulator, packager or labeler may be deemed a “manufacturer” for purposes of California’s HCS. A copy of the California HCS may be found at 8 CCR § 5194.

- **Exposure criteria.** Exposures that meet the Proposition 65 exposure criteria are exempted from the warning requirement. For carcinogens, this means that the exposure will pose no significant risk of cancer. For reproductive toxicants, it means that there will be no observable effect assuming an exposure at 1,000 times the level in question. In order to take advantage of this exemption, you must determine the amount of exposure that occurs as a result of your business activities, and then determine whether the exposure will exceed the relevant exposure criteria. If you are prepared to demonstrate that the exposure does not exceed the relevant exposure criteria, then a warning is not required. If you are not prepared to make such a demonstration, then you should provide a clear and reasonable warning. Be mindful of the fact that the Proposition 65 exposure criteria are often far more stringent than the levels deemed acceptable by other governmental authorities.

- **Clear and reasonable warnings.** In order to be effective as a clear and reasonable Proposition 65 warning, the warning must meet certain general criteria for the method of transmission and the content of the warning message.
 - The **method** employed to transmit the warning must be reasonably calculated, considering the alternative methods available under the circumstances, to make the warning message available to an individual prior to exposure. 22 CCR § 12601(a).
 - The **message** must clearly communicate that the chemical in question is known to the State to cause cancer, on the one hand, or birth defects or other reproductive harm, on the other. *Id.*

- **Safe harbor warnings.** OEHHA has developed safe harbor warnings that are deemed to be clear and reasonable. You may rely on the safe harbor warning methods and messages, but you are not required to do so. You may develop your own warning system so long as the warnings you convey meet the general requirements set forth above for the warning method and the message. Be

advised, however, that attempts to soften the warning message by the use of the words “may contain” chemicals known to cause cancer or reproductive toxicity, or by describing contrary data obtained in some studies, may cause the warning to be questioned as not being “clear and reasonable.” Safe harbor warnings are provided for three types of exposure: consumer product, occupational and environmental, as described below.

- **Consumer product exposures.** A consumer product exposure is one that “results from a person’s acquisition, purchase, storage, consumption, or the reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service.” 22 CCR § 12601(b). Three **methods** of transmission are deemed clear and reasonable for consumer product warnings. They may be used alone or in combination.
 - A warning that appears on a product’s label or other labeling, if it is likely that the label will be read and understood by ordinary persons using the product.
 - identification of the product at the retail outlet in a manner that provides a warning. Identification may be through shelf labeling, signs, menus or a combination of these.
 - A system of signs, public advertising identifying the system, and toll-free information services, or any other system that provides clear and reasonable warnings.

To the extent practicable, warning notices, signs and labels must be provided by the **product manufacturer, producer or packager**, rather than by the retail seller. 22 CCR § 12601(b)(2). Warnings on product labels or retail signage must be styled and placed in a manner likely to be read and understood by an ordinary individual under customary conditions of purchase or use. Signs must be conspicuous, and label warnings must stand out as compared with other signs, words, designs or statements on the label. 22 CCR § 12601(b)(3).

The **warning message** must effectively communicate to the user that the chemical in question is known to the State to cause cancer and/or birth defects or other reproductive harm. The safe harbor regulations provide language for consumer product warnings that will be deemed clear and reasonable if properly transmitted.

For consumer products that contain a **carcinogen**, the following language is provided:

WARNING: This product contains a chemical
known to the State of California to cause cancer.

For consumer products that contain a **reproductive toxicant**, the following language is provided:

WARNING: This product contains a chemical
known to the State of California to cause birth
defects or other reproductive harm.

Do not use the carcinogen warning if the product contains only a reproductive toxicant. Similarly, do not use the reproductive toxicant warning if the product contains only a carcinogen. If the product contains both a carcinogen and a reproductive toxicant, use both warnings. If you combine the warnings and say that the product contains a chemical known to the State to cause cancer “or” birth defects or other reproductive harm, the warning may be deemed ineffective. You may combine the warning where the same chemical is both a carcinogen and a reproductive toxin. In that case the following warning can be used:

WARNING: This product contains a chemical
known to the State of California to cause cancer
and birth defects or other reproductive harm.

- **Occupational exposures.** Occupational exposures are defined by the regulations as “an exposure, in the workplace of the employer causing the exposure, to any employee.” 22 CCR § 12601(c). Occupational exposures do not include exposures to visitors to the workplace or to persons residing near the workplace. Although the Proposition 65 regulations provide safe harbor warning methods and messages for occupational exposures, the California HCS applies as a result of federal preemption by the federal HCS. The California HCS requires an employer to comply with the California HCS as the method to comply with Proposition 65 where the chemical exposure involved is subject to both the California HCS and Proposition 65. Where the chemical exposure is not otherwise subject to the California HCS, the employer can comply with either the California HCS or the Proposition 65 safe harbor warnings for occupational exposures.

- Alternative safe harbor warning methods and messages for occupational exposures include:
 - Labels on products used in the workplace that carry the messages in the manner set forth above for consumer product warnings.
 - Signs posted conspicuously in the affected areas of the workplace with one or both of the following messages:
 - WARNING: This area contains a chemical known to the State of California to cause cancer.
 - WARNING: This area contains a chemical known to the State of California to cause birth defects or other reproductive harm.
 - Full compliance with all information, training and labeling requirements of the federal Hazard Communication Standard, 29 CFR § 1910.1200, the California Hazard Communication Standard (which now incorporates the Proposition 65 requirements), 8 CCR § 5194, or if applicable, the Pesticides and Worker Safety requirements, 3 CCR § 6700 et seq.

- **Environmental exposures.** All exposures that are not occupational or consumer product exposures are considered to be environmental exposures. Environmental exposures are generally defined as exposures “which may foreseeably occur as the result of contact with an environmental medium, including, but not limited to, ambient air, indoor air, drinking water, through inhalation, ingestion, skin contact, or otherwise.” 22 CCR § 12601(d). The exposure of nearby residents to air pollutant emissions from manufacturing facilities and exposures to customers or other visitors at distribution facilities are examples of potential environmental exposures.

In order to be effective, an environmental exposure warning must be likely to be read, seen or heard and understood by an ordinary individual in the course of normal activity. 22 CCR § 12601(d)(2). In order to rely upon a “safe harbor” warning for environmental exposures, you should use the most appropriate of the following alternative methods:

 - Posting signs in the affected area. For potential exposures to agricultural chemical applications, signs posted in the manner described in Department of

Pesticide Regulation at 3 CCR § 6776(e)(1) are an appropriate method of warning. 22 CCR § 12601(d)(1)(A).

- A notice mailed or otherwise delivered to each occupant in the affected area at least once every three months during the period of exposure. No safe harbor warning message is provided in the regulations for this type of warning. 22 CCR § 12601(d)(1)(C).
- A warning provided by public media announcements that target the affected area at least once every three months during the period of exposure. No safe harbor warning message is provided in the regulations for this type of warning. 22 CCR § 12601(d)(1)(D).

The form and content of media announcements and published notices have been the subject of much litigation. You should consult counsel before choosing one or more of the three “safe harbor” methods for environmental exposure warnings.

Assessing Compliance

Assessing the state of your company's compliance with Proposition 65 is not likely to be a simple matter. Nevertheless, the general steps to follow are outlined below.

Please note: The following approach does not attempt to cover all aspects of any individual company's Proposition 65 compliance. If you have questions about whether Proposition 65 applies to your products or how to comply with it, you may wish to consult legal counsel.

Step 1: Does Proposition 65 Apply to You?

Are you doing business? Unless you are a local, state or federal governmental entity or a public water system, for purposes of Proposition 65 you probably are doing business. "Business" is defined very broadly. It includes not-for-profit activities and any activities of your employees that further the purposes or operation of the business. 22 CCR § 12102(k).

Do you have 10 or more employees? The number of your employees includes all of the persons who are employees for purposes of Unemployment Insurance Code § 621 and Labor Code § 3351. Be sure to count all full-time and part-time employees, including seasonal employees and contract laborers. You may also need to count commissioned sales persons depending on their arrangements with you. 22 CCR § 12102(h). If the number of your employees changes from time to time, remember that the number of employees you have on the day of exposure or the day of discharge is the number that counts, not the number you ordinarily employ. If you count 10 or more employees, then read on. If not, then be sure to check again as your business grows.

Are you an out-of-state manufacturer? If you are an out-of-state manufacturer of an industrial product intended for use *solely* in the workplace, then the Proposition 65 warning requirement for workplace exposures does not apply to you. The federal HCS preempts Proposition 65, except to the extent incorporated into the California State Plan. The State Plan applies only to manufacturers, distributors and employers operating within the State. If your product may expose individuals outside the workplace, however, then you are subject to Proposition 65 and may have a warning obligation with regard to the non-workplace exposures.

Are you an in-state distributor? If you are a distributor of an *industrial use* product, then it appears that you are not required to provide independent Proposition 65 warnings to downstream customers. Instead, you are required to provide downstream customers with copies of the Material Safety Data Sheets (“MSDS”) and labels prepared by the manufacturer. Nevertheless, OSHA has recognized that in some cases, an in-state distributor can become a “manufacturer” subject to Proposition 65 by engaging in certain in-state conduct, such as re-packaging the product, re-formulating the product, or mixing chemicals. In that case, you may be required to comply with the California HCS as an in-state manufacturer. Of course, all in-state employers are subject to the California HCS.

Step 2: Identify Listed Chemicals

Whether you are concerned about exposures, discharges or releases, the next step is to determine whether your business activities in the State of California, including any products or services you sell in California, involve or contain any Proposition 65 listed chemicals. The most recently issued list of Proposition 65 chemicals available at the time of publication are set forth in the Proposition 65 regulations. The current list of regulations is available on the OEHHA web site at www.oehha.org.

For a product, you should identify all chemicals in the product, including the packaging. For services, consider all chemicals used in providing the service. If you maintain a workplace in California, identify all of the chemicals that you handle in the workplace. Then check the Proposition 65 list to see whether any of your chemicals are on the list. Note that the list is updated frequently, so your compliance program must be ongoing.

If your product (plus packaging), services, or other activities do not involve any listed chemicals, that will likely complete your Proposition 65 compliance program for now. Proposition 65 only applies to listed chemicals. But if you have identified a listed chemical, read on.

Step 3: Identify “Exposures” and “Discharges”

Exposures. The next step is to determine whether your handling of a listed chemical or the foreseeable use of your product or service will expose anyone to the listed chemical. With regard to a California workplace, you should determine whether there are any potential exposures to employees in your workplace or other persons who may reside or work near your workplace or other business activities. Typical routes of exposure include inhalation, skin absorption and ingestion.

Discharges. For purposes of the discharge prohibition, the question is a little different: whether the discharged chemical passes or probably will pass into a source of drinking water. Chemicals discharged to air or land may find their way into a source of drinking water. Similarly, chemicals released from a product, such as a faucet or a pipe, may pass into tap water, which is considered a source of drinking water.

Step 4: Determine Level of Exposure or Discharge

Exposures. Once you have identified potential exposures to a listed chemical, determine whether any exposures require a warning.

Discharges. Similarly, if you have identified a potential discharge or release of a listed chemical that is likely to enter a source of drinking water, the next step is to determine whether the chemical will enter the source of drinking water in a “significant amount.”

In some instances you may know, without need for additional measurement, that the exposure is so far above or below the Proposition 65 exposure criteria that you need not dwell on this step. In other instances you may need to perform an assessment of the level of exposure involved. 22 CCR §§ 12721, 12821. Similarly, you may need to evaluate further whether the discharge or release may enter drinking water in a significant amount. To do this, you must determine whether the amount would exceed the Proposition 65 exposure criteria if a person were exposed to the amount in drinking water.

Step 4a: Carcinogens: Determine Whether Exposure or Discharge is Below the “No Significant Risk Level”

The Proposition 65 warning requirement for exposure to a carcinogen does not apply if the exposure poses “no significant risk.” The discharge prohibition does not apply if the amount of listed chemical that will likely enter a source of drinking water will pose “no significant risk” if a person were exposed to that amount in drinking water. “No significant risk” is defined as a risk of fewer than one excess case of cancer in an exposed population of 100,000 assuming a lifetime exposure at the level in question.

The State has established regulatory levels that are deemed to pose “no significant risk” for some listed carcinogens. 22 CCR § 12705. This list is updated from time to time.

For carcinogens without a regulatory level, the regulations provide methods for performing a risk assessment to determine whether the exposure would pose “no significant risk.” See 22 CCR §§ 12701, 12721.

Step 4b: Reproductive Toxicants: Determine Whether Exposure or Discharge is 1,000 Times Less than the “No Observable Effect Level”

The Proposition 65 warning requirement for exposure to a reproductive toxicant does not apply if the exposure “will have no observable effect assuming exposure at one thousand (1,000) times the level in question.” Similarly, the discharge prohibition does not apply if the amount of listed chemical that will likely enter a source of drinking water “will have no observable effect assuming exposure at one thousand (1,000) times the level in question” if a person were exposed to that amount in drinking water.

The State has established regulatory levels for certain reproductive toxicants. 22 CCR § 12805. If the level of exposure does not exceed the regulatory level, then no Proposition 65 warning is needed and you have not violated the discharge prohibition. But note that the State may update these levels from time to time.

For reproductive toxicants without a regulatory level, the regulations provide methods for establishing a no observable effect level. 22 CCR §§ 12801 and 12803.

Step 5: Compliance

The result of your analysis will be a determination regarding whether a warning is required or whether a discharge is prohibited under Proposition 65. Each determination presents a different set of alternatives.

Step 5a: Complying with the Warning Provision

If you are exposing Californians to a listed chemical at levels that exceed the Proposition 65 exposure criteria, then Proposition 65 requires you to provide a “clear and reasonable” warning prior to the exposure. As discussed above, the warning must clearly communicate that the chemical in question is known to the State to cause cancer, or birth defects or other reproductive harm.

One other alternative, which many companies have found attractive, is to reformulate the product or discontinue use of the listed chemical in providing services or in manufacturing processes. The goal is to eliminate or reduce exposures to a level below the exposure criteria and thus avoid the need to provide a Proposition 65 warning.

Step 5b: Complying with the Discharge Prohibition

If you are discharging or releasing a chemical in an amount that is likely to enter a source of drinking water in a “significant amount,” the final compliance steps are not so simple. Issuing a warning will not bring you into compliance with Proposition 65.

Instead, you must cease the discharge, either by revising the process or activity that produces, discharges or releases the listed chemical or by discontinuing use of the chemical.

A Final Word

Complying with Proposition 65 is not a simple matter. The regulations under Proposition 65 have far more nuances than can be explained in this brief introduction. In addition, the law is not static. Only a few of its terms have been addressed by the courts. Proposals to change the statute and regulations are under recurring consideration. Public enforcers, environmental groups and “bounty hunters” are bringing increasing numbers of suits. More chemicals will undoubtedly be listed.

Thus, it is important that you continue to pay close attention to the developing law of Proposition 65 and seek the advice and assistance of experienced counsel in addressing your company’s compliance with Proposition 65. For additional information or assistance, please contact Trenton H. Norris.

Trenton H. Norris

Trent Norris, a partner in the San Francisco office of Bingham McCutchen, is recognized as a leader among the handful of most experienced Proposition 65 lawyers. In his 12 years of experience with the law, he has represented over 100 companies – large and small – in Proposition 65 litigation and compliance matters.

Mr. Norris has published numerous articles and regularly speaks to trade associations and clients about Proposition 65 developments. From 2002 to 2004, he served as Chair of the Editorial Advisory Board of Prop 65 News. He has served on the Advisory Board of the Prop 65 Clearinghouse since its inception in 2004. In the 2004 election campaign, he served as a volunteer spokesperson for the "Yes on 64" campaign that resulted in reforms of the state's Unfair Business Practices Act that have reined in frivolous litigation against companies doing business in California.

Mr. Norris's clients are primarily manufacturers, distributors and retailers of everyday products. His cases have involved diverse products, technologies and industries, including water meters, plumbing valves, bottled water, dandruff shampoo, well pumps, power tools, medical devices, light bulbs, herbal remedies, aquarium additives, crystal glassware, soft drinks, vaccines, home electronics, paints, detergents, building materials, dietary supplements, snack chips, motor vehicles, pharmaceuticals, batteries and hospital sterilization equipment. Given this variety, Mr. Norris is also experienced in the interplay between Proposition 65 and other legal requirements such as the food and drug laws, false advertising laws, and consumer protection laws. In addition to these areas, Mr. Norris also represents consumer product and service companies in product liability and intellectual property matters.

Mr. Norris received his degrees magna cum laude from Brown University (A.B. 1986) and Harvard University (J.D. 1992), where he was an editor of the Harvard Law Review. Before attending law school, he served as the top legislative aide to a United States Senator on environmental matters.

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