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Proposition 65: California Attorney General Stipulates to Judgment Prohibiting Warning Requirements for DEA

California's Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code Section 25249.5 *et seq.* ("Proposition 65"), requires manufacturers, distributors, retailers, and other entities in the stream of commerce to provide a "clear and reasonable" warning before knowingly and intentionally exposing California consumers to any of the approximately 900 chemicals the State has listed as known to cause cancer, reproductive harm, or both. For decades, the statute has been enforced aggressively by the California Attorney General and, more frequently, by private "bounty hunter" plaintiffs authorized to sue on behalf of the public. A recent stipulated judgment involving diethanolamine ("DEA"), together with a growing line of federal First Amendment decisions involving other listed chemicals, is dramatically changing that enforcement landscape.

THE PERSONAL CARE PRODUCTS COUNCIL'S DEA JUDGMENT

In March 2026, the Personal Care Products Council ("PCPC") sued the State of California alleging

that Proposition 65 enforcement as to DEA was unconstitutional because the underlying science was unsettled and that forcing companies to warn consumers that DEA was "known" to cause cancer was a First Amendment violation. *The Personal Care Products Council v. Bonta*, No. 2:26-cv-00682-DJC-CKD (E.D. Cal.). In other words, PCPC contended that enforcing Proposition 65 warnings relating to DEA was forbidden "compelled speech" in requiring companies to display warnings that are scientifically controverted.

In April of this year, PCPC filed a motion for summary judgment, arguing that the science underlying DEA's listing as a Proposition 65 chemical was not adequately supported. PCPC pointed out that cancer from DEA exposure had only been observed in mice, and that applying DEA to the skin was unlikely to be harmful to humans given that DEA does not readily permeate the skin.

Instead of opposing PCPC's motion for summary judgment, the State of California agreed to a stipulated

judgment enjoining enforcement of Proposition 65 as to DEA (the “DEA Judgment”). Judge Calabretta of the Eastern District of California entered judgment on June 24, 2026, stating:

The Court further ORDERS, ADJUDGES AND DECLARES that, based on the current state of the relevant science, the Proposition 65 warning requirement for cancer as applied to diethanolamine cannot be constitutionally enforced, consistent with the First Amendment, by the Attorney General of the State of California, his officers, employees, and agents, and all those acting in privity or concert with the Attorney General and those individuals.

THE PRACTICAL IMPLICATIONS ON PROPOSITION 65 DEA ENFORCEMENT

The California Attorney General is now permanently enjoined from pursuing Proposition 65 enforcement actions based on an alleged failure to warn regarding exposures to DEA in cosmetics and personal care products. While the injunction refers to those “acting in privity or concert” with the California Attorney General as being bound by the judgment, it does not explicitly name or prohibit private parties from bringing DEA-based lawsuits. As a result, while many private enforcers who were in the midst of pursuing notices of violation have withdrawn such enforcement actions, other private actors have exploited the ambiguity in the DEA Judgment to persist in or renew their efforts to enforce DEA labeling. Therefore, despite the favorable ruling, companies should approach broad compliance changes with caution. The injunction by its terms is limited to the cosmetics and personal care products industries, is silent on private enforcers, and may be revisited if there is a change in scientific evidence or governing law.

THE TREND OF CONSTITUTIONAL CHALLENGES TO PROPOSITION 65 LABELING

The DEA Judgment does not stand alone. It is the latest chapter in a developing line of federal decisions holding that where the science linking a listed chemical to cancer or reproductive harm is genuinely disputed,

a compelled Proposition 65 warning cannot survive First Amendment scrutiny. Similar decisions about other Proposition 65 chemicals, such as glyphosate, acrylamide, and titanium dioxide, have effectively halted all private attorney general litigation over those substances.

In *National Association of Wheat Growers v. Bonta*, 85 F.4th 1263 (9th Cir. 2023), the Ninth Circuit affirmed summary judgment against the glyphosate cancer warning, holding that the warning “as applied to glyphosate—in any form that had been presented to [the] Court—[was] not purely factual and uncontroversial” and could not survive intermediate scrutiny, particularly because U.S. and international regulators had not classified glyphosate as a probable human carcinogen. The acrylamide-in-food warning met a similar fate. In *California Chamber of Commerce v. Council for Education and Research on Toxics*, 29 F.4th 468 (9th Cir. 2022), the Ninth Circuit affirmed a preliminary injunction against Proposition 65 enforcement for acrylamide, finding a “robust disagreement” among reputable scientific sources. On remand, Judge Calabretta (the same judge who entered the DEA Judgment) granted summary judgment against enforcement in *California Chamber of Commerce v. Bonta*, 781 F. Supp. 3d 1071 (E.D. Cal. 2025), rejecting the State’s sentence-by-sentence “literally true” defense and holding that the warning “conveys the one-sided message that people who consume dietary acrylamide will increase their risk of cancer without sufficient scientific consensus to support that message.” This brought the death knell to acrylamide-in-food enforcement. And more recently, in *The Personal Care Products Council v. Bonta*, No. 2:23-cv-01006-TLN-JDP (E.D. Cal. Aug. 12, 2025), the Eastern District of California granted PCPC summary judgment and enjoined enforcement of the Proposition 65 cancer warning for titanium dioxide in cosmetics and personal care products, finding the warning misleading and “controversial” in light of the International Agency for Research on Cancer’s own finding of “inadequate evidence for the carcinogenicity of titanium dioxide in humans” and the ongoing scientific debate over the human relevance of rat particle-overload inhalation studies. The injunction expressly reaches “private

citizen enforcers under California Health & Safety Code § 25249.7(d),” barring them from “filing or prosecuting new lawsuits” to enforce the warning.

Taken together, these cases reflect a growing line of First Amendment decisions limiting compelled Proposition 65 warnings where the warning would communicate a scientifically disputed or potentially misleading human health risk message. Beauty, cosmetics, and personal care product manufacturers, retailers, and suppliers should review active Proposition 65 notices of violation, pending enforcement actions, settlement obligations, and supply-chain documentation involving DEA or DEA-related ingredients to determine how the DEA Judgment impacts those matters. And more broadly, companies in all industries facing pending or threatened Proposition 65 warning claims should consider whether similar arguments may apply to other listed chemicals where the warning message may overstate or mischaracterize the current scientific evidence.

For more information or assistance, please contact [Cheryl S. Chang](#), [Jessica A. McElroy](#), [Brittany Wei](#) or another member of Blank Rome’s [Product Liability](#) or [California Proposition 65](#) teams.

Cheryl S. Chang
424.239.3472 | cheryl.chang@blankrome.com

Jessica A. McElroy
424.239.3419 | jessica.mcelroy@blankrome.com

Brittany Wei
424.239.3431 | brittany.wei@blankrome.com