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VIA ELECTRONIC SUBMISSION ONLY

Monet Vela
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Re: Public Comment on Proposed Amendments to Article 6 Clear and Reasonable Warnings Cannabis (Marijuana) Smoke and Delta-9-THC Exposure Warnings New Sections 25607.38 – 25607.47.

Dear Ms. Vela:

This information is submitted in response to the Request for Comments concerning the proposed rulemaking issued by the Office of Environmental Health Hazard Assessment ("OEHHA") on March 19, 2021, whereby OEHHA proposed to add specific tailored safe harbor exposure warning methods and content for retail products that can expose consumers to cannabis smoke or delta-9-THC via inhalation, ingestion, or dermal application, and for environmental exposures to cannabis smoke and delta-9-THC at businesses where smoking of cannabis or vaping or dabbing of delta-9-THC occurs. We thank you in advance for your consideration in these very important matters.

1. **The Proposed Warnings Are Overbroad.** The proposed rules would require cannabis operators to add, at the very least, the following (or similar) additional language to the already crowded labels upon the packages for their products:

Smoking cannabis increases your cancer risk and during pregnancy exposes your child to delta-9-THC and other chemicals that can affect your child's birthweight, behavior and learning ability. For more information go to www.P65Warnings.ca.gov/cannabis.

It should be noted that cannabis operators already are required to include, in addition to a plethora of other requirements, the following text on their products' labels:

{999/0001/LTR/01704454.DOCX}



GOVERNMENT WARNING: THIS PRODUCT CONTAINS CANNABIS, A SCHEDULE I CONTROLLED SUBSTANCE. KEEP OUT OF REACH OF CHILDREN AND ANIMALS. CANNABIS PRODUCTS MAY ONLY BE POSSESSED OR CONSUMED BY PERSONS 21 YEARS OF AGE OR OLDER UNLESS THE PERSON IS A QUALIFIED PATIENT. THE INTOXICATING EFFECTS OF CANNABIS PRODUCTS MAY BE DELAYED UP TO TWO HOURS. CANNABIS USE WHILE PREGNANT OR BREASTFEEDING MAY BE HARMFUL. CONSUMPTION OF CANNABIS PRODUCTS IMPAIRS YOUR ABILITY TO DRIVE AND OPERATE MACHINERY. PLEASE USE EXTREME CAUTION.

17 California Code of Regulations ("CCR") § 40408; Business and Professions Code ("BPC") §26120(b)(1)

As such, the new suggested language is redundant. Furthermore, 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 text on the label will be so dense that it will be meaningless to the consumer. The effect will be to seriously undermine the public policy goals of the *Safe Drinking Water and Toxic Enforcement Act of 1986* or Proposition 65 ("Prop 65").

We respectfully suggest that OEHHA coordinate with the Bureau of Cannabis Control ("BCC") and the Manufactured Cannabis Safety Branch ("MCSB") to devise warning language that is consistent and presented in such a way that it will produce the desired effect of such warning labels, one that is most aligned with the core purposes of the underlying legislation for Prop 65.

2. **The Warnings Will Increase Unnecessary Packaging.** Current cannabis packaging is relatively small, in comparison to other consumer goods, as product dosages are strictly limited under state laws. Thus, most cannabis operators will need to use larger packaging to effectively comply with the new, larger-text, safe harbor provisions and cannabis regulations. This necessity for space, in turn, will create unnecessary environmental waste. Unfortunately, the legal cannabis industry has already become a significant contributor to the problem of plastic packaging waste. Because of California's existing regulations governing how cannabis products must be packaged, many products end up being marketed in much more plastic than is necessary. Brands use extra plastic to comply and that contributes a massive volume of single-use plastic, including approximately two million single-joint tubes to the state's waste stream and landfills each year.¹ The new proposed warning language would compound this problem by creating an even greater need for larger packages to accommodate all the requisite warnings.

¹ <https://hightimes.com/news/california-news/dispensary-cannabis-packaging-waste/>



3. **Competition With Unregulated Products.** Not the least important of considerations is the illicit market in California. Some experts estimate that California’s illicit cannabis marketplace is anywhere from twice to three times as big as the legal market.² The proposed warnings will present lawful, tested, and relatively safe cannabis products as injurious to health while illicit product producers escape such warnings, making their products appear safer to the consumer. The warnings will add significant cost pressures and workload to California's already overburdened industry, particularly during a period of regulatory and economic uncertainty, increasing the difficulties regulated operators face over those who are unregulated. At a time where the State is making some progress against the illicit market, such newly proposed regulations may drive traffic to the illicit market. For small businesses already operating on thin margins, this proposed amendment could be financially devastating. Such additional costs do not benefit the health and safety of California’s consumers, but only serve to contribute to higher barriers to entry for legal operators and encourage participation in the illicit cannabis market, which, as previously stated, currently outnumbers legal cannabis operators as high as 3-to-1.

California’s cannabis industry is one of the most highly regulated consumer industries in the state. Cannabis and cannabis products must follow strict health and safety standards, including rigorous product testing for compounds and contaminants, labeling of all cannabis content, and myriad regulatory protections and label warnings to prevent access to minors. Moreover, because “Marijuana Smoke” is already listed under OEHHA’s “Chemicals Considered or Listed under Proposition 65” for both cancer and reproductive health, cannabis operators already follow the current guidelines related to Proposition 65 warnings and disclaimers.

4. **The Product-Specific Warnings Are Unnecessary.** Regulated operators have fully embraced Prop 65 warnings, despite having developed their products under a medical program that rose out of the AIDS epidemic, and they currently place appropriate warnings on their packaging. They have in general not abused the system by putting the short form warning on large packages. They are in compliance in large numbers and should not be singled out for special requirements based upon the nature of their business.

These changes are being proposed at a time of tremendous uncertainty for California’s legal cannabis industry. Not only is everyone grappling with the ongoing economic fallout of the COVID-19 pandemic, cannabis operators are also faced with the pending consolidation of the three cannabis licensing agencies into one Department of Cannabis Control. With this consolidation will come many potential changes to cannabis regulation and compliance affecting all aspects of the supply chain. Yet another label change, the goal of which is already achieved through cannabis regulations, would simply add greater confusion to an already uncertain time for the cannabis industry.

² <https://www.forbes.com/sites/chrisroberts/2021/03/26/why-the-legal-cannabis-industry-wants-californias-new-top-cop-to-bust-marijuana/?sh=569e2d061901>

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For these reasons, we respectfully oppose the proposed amendments to Article 6 of Title 27 of the CCR, at least until the cannabis industry knows when the many other regulatory changes operators are expecting, particularly those related to packaging and labeling, to be implemented. If a year is being suggested as a reasonable time for achieving compliance, we suggest allowing an additional year for operators to reach compliance.

Thank you for your time and consideration of this very important issue.

Very Truly Yours,

LDe /s/

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