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November 23, 2015

Pharmaceutical Working Group
c/o Angelo J. Bellomo, REHS, QEP
Deputy Director for Health Protection
5050 Commerce Drive
Baldwin Park, CA 91706

Dear Mr. Bellomo:

The Civil Justice Association of California (CJAC) respectfully opposes the Los Angeles County Pharmaceuticals and Sharps Collection and Disposal Stewardship Ordinance, unless it is amended to remove the private right of action. In its current version, the ordinance would encourage unnecessary lawsuits against pharmaceutical manufacturers and their partners over claims of noncompliance with a new regulatory scheme related to unwanted drugs and/or sharps. This ordinance would require manufacturers to administer a new stewardship program with a long list of directives that will open these companies to the potential of significant litigation.

Of specific concern to CJAC and its members are the provisions that provide for a private right of action by which specified groups can file a civil action against non-compliant manufacturers. We fear that allowing individual lawsuits of this kind, particularly when combined with the ability to receive civil penalties and one-sided award of attorney's fees, will create more "shakedown litigation" as we have seen with Prop 65. What the business community has experienced with Prop. 65 litigation is that private enforcement actions have grown considerably and appear to be driven less by a concern for public health and more by a desire to win penalties and legal fees.

CJAC believes that the private right of action contained in this proposed ordinance will be abused by some attorneys in the enforcement community for financial gain. Again, this has been our consistent experience with Prop. 65. Even Governor Brown has acknowledged this when he called for Prop. 65 reforms, noting that "Proposition 65 is a good law that's helped many people, but it's being abused by unscrupulous lawyers" (Office of Governor Brown Press Release, May 7, 2013). Despite the good intent behind Prop 65, even the Courts have noted that "bringing Proposition 65 litigation is "absurdly easy." Judges have described it as "litigation is as easy as shooting the side of a barn, drawing circles around the bullet holes and them claiming you hit the bull's eye ..." (*Consumer Def. Group v. Rental Hous. Indus. Members*, 137 Cal. App. 4th 1185, at 1220 (2006)).

As a result, we respectfully request that subdivision (d) of Section 11.130 Stewardship Plans - Enforcement and Penalties (Page 21, Lines 13-25 through Page 22, Lines 1-6) set forth below, be removed:

(d) The District Attorney, applicable City Attorney, a Producer, or any organization with tax exempt status under 26 United States Code Section 501(c)(3) or 501(c)(4) and with a primary mission of protecting the environment may bring a civil action to enjoin violations of or compel compliance with any requirement of this Chapter or any rule or regulation adopted pursuant to this Chapter, as well as for payment of civil penalties and any other appropriate remedy. The court shall award reasonable attorney's fees and costs to the District Attorney, applicable City Attorney, Producer, or a nonprofit organization that is the prevailing party in a civil action brought under this subsection (d). A Producer or nonprofit organization may institute a civil action under this subsection (d) only if:

- (1) The Producer or nonprofit organization has filed a Complaint with the Director;
- (2) 90 days have passed since the filing of the Complaint;
- (3) After such 90-day period has passed, the Producer or nonprofit organization provides 30-day written notice to the Director and the District Attorney or applicable City Attorney of its intent to initiate civil proceedings; and
- (4) Neither the District Attorney nor applicable City Attorney has provided notice to the Producer or nonprofit organization of its intent to initiate civil proceedings by the end of the 30-day period.

The private enforcement action in the ordinance will likely create a new niche for plaintiff's lawyers, as companies throughout California have experienced with Prop. 65. Unfortunately, private attorneys would be in the position to extract civil penalties and attorney's fees from businesses even when claims have questionable or negligible merit.

We believe the same will occur with this proposed ordinance if Subdivision (d) is not removed. The ordinance would expose pharmaceutical manufacturers and retailers to significant liability without a public policy benefit.

California already continues to consistently rank at the bottom of the national lists for its business and legal climate. Unfortunately, the Pharmaceuticals and Sharps Collection and Disposal Stewardship Ordinance would be another step to reinforce those poor rankings. Thank you for your consideration of our request.

Sincerely,



Kim Stone
President