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Counsel for Plaintiff,
ECOLOGICAL RIGHTS FOUNDATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

ECOLOGICAL RIGHTS FOUNDATION,

Plaintiff,

v.

ARETT SALES CORPORATION, JENSEN
DISTRIBUTION SERVICES, ALLAN BLOCK
CORPORATION, NANTUCKET PAVERS, INC.,
LAYNE LABORATORIES, INC., PATINA
PRODUCTS, INC., CY TOP LIMITED,

Defendants.

Case No. CGC-17-559416

COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES

OTHER [PROPOSITION 65]

ENDORSED
FILED
San Francisco County Superior Court

JUN 08 2017
CLERK OF THE COURT
BY: NEYL WEBB
Deputy Clerk

BY FAX
ONE LEGAL LLC

1 Plaintiff, Ecological Rights Foundation, in the public interest, based on information and belief, and
2 knowledge and investigation of counsel alleges as follows:

3 **INTRODUCTION**

4 1. This Complaint seeks civil penalties and an injunction against Arett Sales Corporation,
5 Jensen Distribution Services, Allan Block Corporation, Nantucket Pavers, Inc., Layne Laboratories,
6 Inc., and Patina Products, Inc., Cy Top Limited, (collectively “Defendants”) to remedy Defendants’
7 continuing failure to warn individuals in California about exposures to carbon monoxide, a chemical
8 known to the State of California to cause reproductive toxicity. Such exposures have occurred and
9 continue to occur, through the use of wood-burning outdoor heating products, such as fire pits, fire
10 rings, fire tables and chimeneas that Defendants manufacture, distribute and/or sell in the State of
11 California (“Products”). These Products are intended to be used with wood fuel and are primarily
12 used for heating, ambience, and cooking. The combustion of wood causes carbon monoxide to be
13 released into the air. People using wood-burning outdoor heating products, and those standing near
14 the Products when wood fuel is burning in or on them, inhale the released carbon monoxide.

15 2. Under California’s Proposition 65, California Health & Safety Code § 25249.5, *et seq.*, it is
16 unlawful for businesses to knowingly and intentionally expose individuals in California to chemicals
17 known to the State to cause cancer, birth defects, or other reproductive harm without providing clear
18 and reasonable warnings to individuals prior to their exposure. Defendants introduce wood-burning
19 outdoor heating products into the California marketplace, exposing users of the Products, including
20 pregnant women, to carbon monoxide. Despite the fact that Defendants expose pregnant women and
21 other consumers and individuals to carbon monoxide, Defendants provide no warnings about the
22 reproductive hazards associated with such exposures. Defendants’ conduct thus violates the warning
23 provision of Proposition 65. Health & Safety Code § 25249.6.

24 3. Plaintiff seeks injunctive relief pursuant to Health & Safety Code Section 25249.7 to compel
25 Defendants to bring their business practices into compliance with Proposition 65 by providing a clear
26 and reasonable warning to each individual who has been and who in the future may be exposed to
27 carbon monoxide in the ways set forth above. Plaintiff seeks an order that Defendants identify and
28 locate each person in California to whom the Defendants conveyed wood-burning outdoor heating

1 products during the past three years and to provide to each such individual, as well as new purchasers
2 and Product users, a clear and reasonable warning that use of the Products causes exposures to a
3 chemical known to cause birth defects and other reproductive harm.

4 4. In addition to injunctive relief, Plaintiff seeks civil penalties to remedy Defendants' failure
5 to provide clear and reasonable warnings regarding exposures to a chemical known to cause birth
6 defects and other reproductive harm.

7 PARTIES

8 5. Plaintiff, Ecological Rights Foundation ("ERF") is a non-profit public benefit organization
9 dedicated to, among other causes, protecting California residents from toxic exposures,
10 environmental and human health education, and consumer rights. ERF is incorporated under the laws
11 of the State of California and is a "person" pursuant to Health & Safety Code §25249.11(a). ERF
12 brings this enforcement action in the public interest pursuant to Health & Safety Code §25249.7(d).

13 6. Defendant Jensen Distribution Services is a person in the course of doing business within the
14 meaning of Health & Safety Code §25249.11(b). Jensen Distribution Services markets, distributes,
15 and/or sells the Products for sale and use in the State of California.

16 7. Defendant Arett Sales Corporation is a person in the course of doing business within the
17 meaning of Health & Safety Code §25249.11. Arett Sales Corporation distributes, and/or sells the
18 Products for sale and use in California.

19 8. Defendant Allan Block Corporation is a person in the course of doing business within the
20 meaning of Health & Safety Code §25249.11. Allan Block Corporation distributes, and/or sells the
21 Products for sale and use in California.

22 9. Defendant Nantucket Pavers, Inc. is a person in the course of doing business within the
23 meaning of Health & Safety Code §25249.11. Nantucket Pavers, Inc. distributes, and/or sells the
24 Products for sale and use in California.

25 10. Defendant Layne Laboratories, Inc. is a person in the course of doing business within the
26 meaning of Health & Safety Code §25249.11. Layne Laboratories, Inc. distributes, and/or sells the
27 Products for sale and use in California.

28 11. Defendant Patina Products, Inc. is a person in the course of doing business within the

1 meaning of Health & Safety Code §25249.11. Patina Products, Inc. distributes, and/or sells the
2 Products for sale and use in California.

3 12. Defendant Cy Top Limited is a person in the course of doing business within the meaning of
4 Health & Safety Code §25249.11. Cy Top Limited distributes, and/or sells the Products for sale and
5 use in California.

6 13. Each Defendant employs more than ten people.

7 **JURISDICTION**

8 14. The Court has jurisdiction over this action pursuant to California Health & Safety Code
9 Section 25249.7. California Constitution Article VI, Section 10 grants the Superior Court "original
10 jurisdiction in all causes except those given by statute to other trial courts." Chapter 6.6 of the
11 Health & Safety Code, which contains the statutes under which this action is brought, does not
12 grant jurisdiction to any other trial court.

13 15. This Court also has jurisdiction over Defendants because they are businesses that have
14 sufficient minimum contacts in California and within the County of San Francisco. Defendants
15 intentionally availed themselves of the California and San Francisco County markets. It is thus
16 consistent with traditional notions of fair play and substantial justice for the San Francisco County
17 Superior Court to exercise jurisdiction over Defendants.

18 16. Venue is proper in San Francisco County Superior Court because one or more of the
19 violations arise in the County of San Francisco.

20 **BACKGROUND FACTS**

21 17. The People of the State of California have declared by initiative under Proposition 65 their
22 right "[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other
23 reproductive harm." Proposition 65, § 1(b). To effectuate this goal, Proposition 65 prohibits exposing
24 people to chemicals listed by the State of California as known to cause cancer, birth defects, or other
25 reproductive harm without a "clear and reasonable warning" unless the business responsible for the
26 exposure can prove that it fits within a statutory exemption. Health & Safety Code Section 25249.6
27 states, in pertinent part:
28

1 No person in the course of doing business shall knowingly and
2 intentionally expose any individual to a chemical known to the state to cause
3 cancer or reproductive toxicity without first giving clear and reasonable warning
4 to such individual . . .

5 18. On July 1, 1989, the State of California officially listed carbon monoxide as a chemical
6 known to cause developmental reproductive toxicity, which means harm to the developing fetus. On
7 July 1, 1990, carbon monoxide exposures became subject to the clear and reasonable warning
8 requirements under Proposition 65. 27 C.C.R. § 27001(b); Health & Safety Code Section
9 25249.10(b).

10 19. Plaintiff brings this enforcement action against Defendants pursuant to Health & Safety
11 Code Section 25249.7(d). Attached hereto and incorporated by reference are copies of the Notices
12 of Violation which ERF sent to California's Attorney General, every county District Attorney in
13 California, and to the City Attorneys of every California City with a population greater than 750,000.
14 On the same day, Plaintiff sent substantively identical copies of the respective letters to each
15 Defendant. In compliance with Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), each
16 Notice included the following information: (1) the name and address of each violator; (2) the statute
17 violated; (3) the time period during which violations occurred; (4) specific descriptions of the
18 violations, including (a) the routes of exposure to carbon monoxide from the Products, and (b) the
19 specific type of Products sold and used in violation of Proposition 65; and (5) the name of the specific
20 Proposition 65-listed chemical that is the subject of the violations described in each Notice.

21 20. Attached to each Notice of Violation sent to Defendants was a summary of Proposition 65
22 that was prepared by California's Office of Environmental Health Hazard Assessment. In addition,
23 each Notice of Violation was accompanied by a Certificate of Service attesting to the service of the
24 Notice of Violation on each entity which received it. Pursuant to Health & Safety Code Section
25 25249.7(d) and 11 C.C.R. § 3101, Plaintiff also sent a Certificate of Merit with each Notice of
26 Violation attesting to the reasonable and meritorious basis for the action. Plaintiff enclosed factual
27 information sufficient to establish the basis of the Certificate of Merit with the Notice of Violation
28 letters sent to the Attorney General.

 21. None of the public prosecutors with the authority to prosecute violations of Proposition 65
has commenced and/or is diligently prosecuting a cause of action against Defendants under Health

1 & Safety Code Section 25249.5 *et seq.*, based on the claims asserted in ERF's Notices.

2 22. Defendants both know and intend that individuals, including pregnant women, will use the
3 products for heating, ambience and/or cooking, thus exposing them to carbon monoxide. Under
4 Proposition 65, an exposure is "knowing" where the party responsible for such exposure has
5 "knowledge of the fact that a[n] . . . exposure to a chemical listed pursuant to [Health & Safety Code
6 § 25249.8(a)] is occurring. No knowledge that . . . exposure is unlawful is required." 27 C.C.R. §
7 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final Statement of Reasons
8 Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2, § 12201). Defendants have
9 been informed of the carbon monoxide exposures caused by the use of Products by the 60-Day Notice
10 of Violation, and the accompanying Certificate of Merit served on them by ERF. Defendants also
11 have constructive knowledge of the carbon monoxide exposures caused by Products. As companies
12 that manufacture, market, distribute and/or sell the Products for use in the State of California,
13 Defendants know or should know that carbon monoxide exposures to users of the Products are a
14 natural and foreseeable consequence of Defendants' placing the Products into the stream of
15 commerce.

16 23. Any person "violating or threatening to violate" Proposition 65 may be enjoined in any
17 court of competent jurisdiction. Health & Safety Code § 25249.7. "Threaten to violate" is defined to
18 mean "to create a condition in which there is a substantial probability that a violation will occur."
19 Health & Safety Code § 25249.11(e). Proposition 65 provides for civil penalties not to exceed \$2,500
20 per day for each violation of the statute.

21 24. ERF has engaged in good faith efforts to resolve the claims alleged herein prior to filing
22 this complaint.

23 **FIRST CAUSE OF ACTION**

24 **(Violations of Health & Safety Code §25249.6)**

25 25. ERF realleges and incorporates by reference into this First Cause of Action as if specifically
26 set forth herein, paragraphs 1 through 21, inclusive.

27 26. Each defendant is a person in the course of doing business within the meaning of Health &
28 Safety Code § 25249.11(b) who, by manufacturing, marketing, distribution, sale or otherwise placing

1 the Products into the stream of commerce, violated, violates or threatens to violate Proposition 65.

2 27. Carbon monoxide is a chemical listed by the State of California as known to cause
3 developmental reproductive toxicity.

4 28. Defendants know that the average use of the Products will expose users of the Products to
5 carbon monoxide. Defendants intend that the Products be used in a manner that results in exposures
6 to carbon monoxide.

7 29. Defendants have failed and continue to fail, to provide clear and reasonable warnings
8 regarding the reproductive toxicity of carbon monoxide to users of the Products.

9 30. Since at least three years prior to the Notice of Violation Letters, Defendants have violated
10 Proposition 65 by knowingly and intentionally exposing individuals to carbon monoxide without
11 first giving clear and reasonable warnings to such individuals regarding the reproductive toxicity of
12 carbon monoxide.

13 **PRAYER FOR RELIEF**

14 Wherefore, Plaintiff prays for judgment against Defendants as follows:

- 15 1. Pursuant to the First Cause of Action, that Defendants be enjoined, restrained, and
16 ordered to comply with the provisions of Section 25249.6 of the California Health &
17 Safety Code;
- 18 2. That Defendants be ordered to make best efforts to identify and locate each individual
19 in California to whom they, or their customers or agents, distributed or sold Products
20 during the past three years, and to provide a warning to each such person that use of
21 the Product will expose that person to a chemical known to cause birth defects and
22 other reproductive harm;
- 23 3. That Defendants be assessed a civil penalty in an amount equal to \$2,500.00 per day
24 per individual exposed to carbon monoxide in violation of Section 25249.6 of the
25 California Health & Safety Code, as the result of Defendants' marketing, distributing,
26 and/or selling the Products for use in California.

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- 4. That, pursuant to Civil Procedure Code § 1021.5, Defendants be ordered to pay to Plaintiff the attorneys' fees and costs it incurred in bringing this enforcement action;
and
- 5. For such other relief as this court deems just and proper.

Dated: June 7, 2017

ECOLOGY LAW CENTER



Fredric Evenson, Attorney for Plaintiff
ECOLOGICAL RIGHTS FOUNDATION

ECOLOGY LAW CENTER
P.O. BOX 1000
SANTA CRUZ, CALIFORNIA 95061
TELEPHONE: (831) 454-8216
EMAIL: EVENSON@ECOLOGYLAW.COM

MARCH 27, 2017

NOTICE OF VIOLATIONS
CALIFORNIA SAFE DRINKING WATER AND
TOXIC ENFORCEMENT ACT

| | |
|---|--|
| Jensen Distribution Services c/o Lee N. Smith Coleman & Horowitz, LLP 499 W. Shaw Ave., Ste. 116 Fresno, CA 93704 | Arett Sales Corporation c/o Lee N. Smith Coleman & Horowitz, LLP 499 W. Shaw Ave., Ste. 116 Fresno, CA 93704 |
|---|--|

AND THE PUBLIC PROSECUTORS LISTED ON THE DISTRIBUTION LIST
ACCOMPANYING THE ATTACHED CERTIFICATE OF SERVICE

Re: Violations of Proposition 65 Concerning Carbon Monoxide Exposures from
Wood-burning outdoor heating products, such as fire pits, fire rings, fire tables
and chimeneas

In accord with California Health & Safety Code § 25249.7, Ecological Rights Foundation ("ERF") hereby gives you notice that the above companies have violated and are in ongoing violation of California Health & Safety Code § 25249.6, which provides that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual."

Pursuant to California Health & Safety Code § 25249.7, ERF intends to bring an enforcement action 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify the violations discussed in this notice letter. The public enforcement agencies that have been served with copies of this notice of violations are identified in the attached Certificate of Service.

This Notice of Violations ("Notice") is provided to you pursuant to and in compliance with California Health and Safety Code Section 25249.7(d). Attached for your reference is a summary, "Appendix A: The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary" prepared by the California Office of Environmental Health Hazard Assessment ("OEHHA"). Pursuant to Title 11, C.C.R. § 3100, a Certificate of Merit is also attached.

The above-referenced violations occur when California residents use wood-burning outdoor heating products, such as fire pits, fire rings, fire tables and chimeneas. These products are used primarily for heating, ambience and cooking. They are intended to be used with wood fuel. The combustion of wood produces and exposes people to **carbon monoxide**, a chemical known to the State of California to cause reproductive toxicity. Because the combustion of wood causes carbon monoxide to be released into the air, people using wood-burning outdoor heating products, and

others standing near the products when wood fuel is burning in or on the products, inhale carbon monoxide. Exposure to carbon monoxide is via the inhalation route.

These products cause carbon monoxide exposures to occur in peoples yards, at parks and beaches, and everywhere else throughout California where these products are used. These violations are alleged for consumer and environmental exposures.

The noticed parties did not and do not provide people with clear and reasonable warnings before they expose them in California to carbon monoxide. The above-referenced violations have occurred every day since at least June 9, 2013 and will continue every day until clear and reasonable warnings are given.

ERF is a California non-profit corporation dedicated to protecting human and environmental health, including raising awareness of, and reducing exposures to, toxic chemicals. The following individual is the responsible individual within ERF for purposes of this Notice:

James Lamport, Executive Director
Ecological Rights Foundation
867 B Redwood Drive
Garberville, California 95542
Telephone: (707) 923-4372

ERF has retained the following counsel to represent them in this matter (please direct communications to counsel):

Fredric Evenson
Ecology Law Center
P.O. Box 1000
Santa Cruz, California 95061
Telephone: (831) 454-8216
Email: evenson@ecologylaw.com

Resolution of Noticed Claims:

ERF is interested in seeking a constructive resolution of this matter that advances the public interest without engaging in costly and protracted litigation. ERF is willing to settle this matter to the extent legally possible prior to the commencement of any enforcement action. Settlement terms would require that the unwarned exposures described in this Notice of Violation be stopped. That would require at least the following: 1) a potential recall of products already sold; 2) that either warnings be given to all future purchasers in California of the products subject to this Notice, that the products be reformulated to eliminate the exposures described in the Notice, or that you stop marketing, distributing or selling the products in California; 3) that you locate and provide a warning compliant with 27 Cal. Code Regs Section 25601 to each person who has been subject to the unwarned exposures described in the Notice to the extent those exposures are caused by products that were sold in California during the past three years; and 4) that you pay an appropriate civil penalty based on the factors enumerated in California Health and Safety Code Section 25249(b). It should be noted that ERF cannot finalize any settlement of this matter until 70 days have elapsed since the sending of the Notice and unless no public enforcer has begun an enforcement action concerning the violations described in the Notice. Any settlement on behalf of the public interest must be approved by the California Superior Court on noticed motion with 45 days' notice to the California Attorney General. The Attorney General may appear at any approval hearing and oppose a settlement if he or she believes the proposed settlement is not in the public interest. If you wish to discuss settlement of this matter before ERF files suit, please promptly contact ERF's counsel.

Sincerely,



Fredric Evenson

ECOLOGY LAW CENTER

P.O. Box 1000

SANTA CRUZ, CALIFORNIA 95061

TELEPHONE: (831) 454-8216

EMAIL: EVENSON@ECOLOGYLAW.COM

DECEMBER 12, 2016

NOTICE OF VIOLATIONS CALIFORNIA SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT

| | |
|--|--|
| John William Waterman Registered Agent Layne Laboratories, Inc. 4303 Huasna Road Arroyo Grande, CA 93420 | John William Waterman Registered Agent Patina Products, Inc 4303 Huasna Road Arroyo Grande, CA 93420 |
|--|--|

AND THE PUBLIC PROSECUTORS LISTED ON THE DISTRIBUTION LIST
ACCOMPANYING THE ATTACHED CERTIFICATE OF SERVICE

Re: Violations of Proposition 65 Concerning Carbon Monoxide Exposures from
Wood-burning outdoor heating products, such as fire pits, fire rings, fire tables
and chimeneas

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Pursuant to California Health & Safety Code § 25249.7, ERF intends to bring an enforcement action 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify the violations discussed in this notice letter. The public enforcement agencies that have been served with copies of this notice of violations are identified in the attached Certificate of Service.

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The above-referenced violations occur when California residents use wood-burning outdoor heating products, such as fire pits, fire rings, fire tables and chimeneas. These products are used primarily for heating, ambience and cooking. Combustion of wood fuel produces and exposes people to **carbon monoxide**, a chemical known to the State of California to cause reproductive toxicity. Because the combustion of wood causes carbon monoxide to be released into the air, people using wood-burning outdoor heating products, and others standing near the products when wood fuel is burning in or on the products, inhale carbon monoxide. Exposure to carbon monoxide is via the inhalation route.

Below is a non-exclusive list of examples of these types of products. Though specific models or SKU or product numbers are given as examples, this Notice pertains to all models, and all variations, of the specific type of product of which the named model is an example.

| |
|--|
| Item # PAT011-1, Mosaic Santa Fe Fire Pit with Free Grill and Cover |
|--|

This non-exclusive list of examples of the type of products that are subject to this Notice is for the recipient's benefit and is not meant to be an exhaustive or comprehensive identification of each specific offending product. It is ERF's position that the alleged Violator is obligated to conduct a good faith investigation into other specific products within the identified category or type that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipient's custody or control) during the past three years, to ensure that clear and reasonable warnings are provided to California citizens prior to purchase, or retroactively if necessary.

These products cause carbon monoxide exposures to occur in peoples yards, at parks and beaches, and everywhere else throughout California where these products are used. These violations are alleged for consumer and environmental exposures.

The noticed parties did not and do not provide people with clear and reasonable warnings before they expose them in California to carbon monoxide. The above-referenced violations have occurred every day since at least December 12, 2013 and will continue every day until clear and reasonable warnings are given.

ERF is a California non-profit corporation dedicated to protecting human and environmental health, including raising awareness of, and reducing exposures to, toxic chemicals. The following individual is the responsible individual within ERF for purposes of this Notice:

James Lamport, Executive Director
Ecological Rights Foundation
867 B Redwood Drive
Garberville, California 95542
Telephone: (707) 923-4372

ERF has retained the following counsel to represent them in this matter (please direct communications to counsel):

Fredric Evenson
Ecology Law Center
P.O. Box 1000
Santa Cruz, California 95061
Telephone: (831) 454-8216
Email: evenson@ecologylaw.com

Resolution of Noticed Claims:

ERF is interested in seeking a constructive resolution of this matter that advances the public interest without engaging in costly and protracted litigation. ERF is willing to settle this matter to the extent legally possible prior to the commencement of any enforcement action. Settlement terms would require that the unwarned exposures described in this Notice of Violation be stopped. That would require at least the following: 1) a potential recall of products already sold; 2) that either warnings be given to all future purchasers in California of the products subject to

this Notice, that the products be reformulated to eliminate the exposures described in the Notice, or that you stop marketing, distributing or selling the products in California; 3) that you locate and provide a warning compliant with 27 Cal. Code Regs Section 25601 to each person who has been subject to the unwarned exposures described in the Notice to the extent those exposures are caused by products that were sold in California during the past three years; and 4) that you pay an appropriate civil penalty based on the factors enumerated in California Health and Safety Code Section 25249(b). It should be noted that ERF cannot finalize any settlement of this matter until 70 days has elapsed since the sending of the Notice and unless no public enforcer has begun an enforcement action concerning the violations described in the Notice. Any settlement on behalf of the public interest must be approved by the California Superior Court on noticed motion with 45 days' notice to the California Attorney General. The Attorney General may appear at any approval hearing and oppose a settlement if he or she believes the proposed settlement is not in the public interest. If you wish to discuss settlement of this matter before ERF files suit, please promptly contact ERF's counsel.

Sincerely,



Fredric Evenson

ECOLOGY LAW CENTER
P.O. Box 1000
SANTA CRUZ, CALIFORNIA 95061
TELEPHONE: (831) 454-8216
EMAIL: EVENSON@ECOLOGYLAW.COM

SEPTEMBER 12, 2016

NOTICE OF VIOLATIONS
CALIFORNIA SAFE DRINKING WATER AND
TOXIC ENFORCEMENT ACT

| | |
|---|---|
| President or CEO Allan Block Corporation 7424 West 78th St Minneapolis, MN 55439 | President or CEO Allan Block Corporation 5300 Edina Industrial Blvd., Ste. 100 Edina, MN 55439 |
|---|---|

AND THE PUBLIC PROSECUTORS LISTED ON THE DISTRIBUTION LIST
ACCOMPANYING THE ATTACHED CERTIFICATE OF SERVICE

Re: Violations of Proposition 65 Concerning Carbon Monoxide Exposures from
Wood-burning outdoor heating products, such as fire pits, fire rings, fire tables
and chimeneas

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Below is a non-exclusive list of examples of these types of products. Though specific models or SKU or product numbers are given as examples, this Notice pertains to all models, and all variations, of the specific type of product (wood-burning outdoor heating products, such as fire pits, fire rings, fire tables and chimeneas) of which the named model is an example.

| |
|-----------------------------------|
| AB Courtyard Collection Fire Pits |
|-----------------------------------|

| |
|---------------------------|
| Titan Block Fire Pit Kits |
|---------------------------|

This non-exclusive list of examples of the type of products that are subject to this Notice is for the recipient's benefit and is not meant to be an exhaustive or comprehensive identification of each specific offending product. It is ERF's position that the alleged Violator is obligated to conduct a good faith investigation into other specific products within the identified category or type that may have been manufactured, distributed or sold (or otherwise within the notice recipient's custody or control) during the past three years, to ensure that clear and reasonable warnings are provided to California citizens prior to purchase, or retroactively if necessary.

These products cause carbon monoxide exposures to occur in peoples yards, at parks and beaches, and everywhere else throughout California where these products are used. These violations are alleged for consumer and environmental exposures.

The noticed parties did not and do not provide people with clear and reasonable warnings before they expose them in California to carbon monoxide. The above-referenced violations have occurred every day since at least September 12, 2013 and will continue every day until clear and reasonable warnings are given.

ERF is a California non-profit corporation dedicated to protecting human and environmental health, including raising awareness of, and reducing exposures to, toxic chemicals. The following individual is the responsible individual within ERF for purposes of this Notice:

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Telephone: (707) 923-4372

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Resolution of Noticed Claims:

ERF is interested in seeking a constructive resolution of this matter that advances the public interest without engaging in costly and protracted litigation. ERF is willing to settle this matter to the extent legally possible prior to the commencement of any enforcement action. Settlement terms would require that the unwarned exposures described in this Notice of Violation be

stopped. That would require at least the following: 1) a potential recall of products already sold; 2) that either warnings be given to all future purchasers in California of the products subject to this Notice, that the products be reformulated to eliminate the exposures described in the Notice, or that you stop marketing, distributing or selling the products in California; 3) that you locate and provide a warning compliant with 27 Cal. Code Regs Section 25601 to each person who has been subject to the unwarned exposures described in the Notice to the extent those exposures are caused by products that were sold in California during the past three years; and 4) that you pay an appropriate civil penalty based on the factors enumerated in California Health and Safety Code Section 25249(b). It should be noted that ERF cannot finalize any settlement of this matter until 70 days have elapsed since the sending of the Notice and unless no public enforcer has begun an enforcement action concerning the violations described in the Notice. Any settlement on behalf of the public interest must be approved by the California Superior Court on noticed motion with 45 days' notice to the California Attorney General. The Attorney General may appear at any approval hearing and oppose a settlement if he or she believes the proposed settlement is not in the public interest. If you wish to discuss settlement of this matter before ERF files suit, please promptly contact ERF's counsel.

Sincerely,



Fredric Evenson

ECOLOGY LAW CENTER
P.O. BOX 1000
SANTA CRUZ, CALIFORNIA 95061
TELEPHONE: (831) 454-8216
EMAIL: EVENSON@ECOLOGYLAW.COM

MARCH 27, 2017

NOTICE OF VIOLATIONS
CALIFORNIA SAFE DRINKING WATER AND
TOXIC ENFORCEMENT ACT

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| Cy Top Limited c/o Corrie L. Plant Pillsbury Winthrop Shaw Pittman, LLP 725 South Figueroa Street, Suite 2800 Los Angeles, CA 90017-5406 | |
|--|--|

AND THE PUBLIC PROSECUTORS LISTED ON THE DISRIBUTION LIST
ACCOMPANYING THE ATTACHED CERTIFICATE OF SERVICE

Re: Violations of Proposition 65 Concerning Carbon Monoxide Exposures from
Wood-burning outdoor heating products, such as fire pits, fire rings, fire tables
and chimeneas

In accord with California Health & Safety Code § 25249.7, Ecological Rights Foundation ("ERF") hereby gives you notice that the above companies have violated and are in ongoing violation of California Health & Safety Code § 25249.6, which provides that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual."

Pursuant to California Health & Safety Code § 25249.7, ERF intends to bring an enforcement action 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify the violations discussed in this notice letter. The public enforcement agencies that have been served with copies of this notice of violations are identified in the attached Certificate of Service.

This Notice of Violations ("Notice") is provided to you pursuant to and in compliance with California Health and Safety Code Section 25249.7(d). Attached for your reference is a summary, "Appendix A: The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary" prepared by the California Office of Environmental Health Hazard Assessment ("OEHHA"). Pursuant to Title 11, C.C.R. § 3100, a Certificate of Merit is also attached.

The above-referenced violations occur when California residents use wood-burning outdoor heating products, such as fire pits, fire rings, fire tables and chimeneas. These products are used primarily for heating, ambience and cooking. They are intended to be used with wood fuel. The combustion of wood produces and exposes people to **carbon monoxide**, a chemical known to the State of California to cause reproductive toxicity. Because the combustion of wood causes carbon monoxide to be released into the air, people using wood-burning outdoor heating products, and others standing near the products when wood fuel is burning in or on the products, inhale carbon monoxide. Exposure to carbon monoxide is via the inhalation route.

These products cause carbon monoxide exposures to occur in peoples yards, at parks and beaches, and everywhere else throughout California where these products are used. These violations are alleged for consumer and environmental exposures.

The noticed parties did not and do not provide people with clear and reasonable warnings before they expose them in California to carbon monoxide. The above-referenced violations have occurred every day since at least June 9, 2013 and will continue every day until clear and reasonable warnings are given.

ERF is a California non-profit corporation dedicated to protecting human and environmental health, including raising awareness of, and reducing exposures to, toxic chemicals. The following individual is the responsible individual within ERF for purposes of this Notice:

James Lamport, Executive Director
Ecological Rights Foundation
867 B Redwood Drive
Garberville, California 95542
Telephone: (707) 923-4372

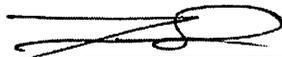
ERF has retained the following counsel to represent them in this matter (please direct communications to counsel):

Fredric Evenson
Ecology Law Center
P.O. Box 1000
Santa Cruz, California 95061
Telephone: (831) 454-8216
Email: evenson@ecologylaw.com

Resolution of Noticed Claims:

ERF is interested in seeking a constructive resolution of this matter that advances the public interest without engaging in costly and protracted litigation. ERF is willing to settle this matter to the extent legally possible prior to the commencement of any enforcement action. Settlement terms would require that the unwarned exposures described in this Notice of Violation be stopped. That would require at least the following: 1) a potential recall of products already sold; 2) that either warnings be given to all future purchasers in California of the products subject to this Notice, that the products be reformulated to eliminate the exposures described in the Notice, or that you stop marketing, distributing or selling the products in California; 3) that you locate and provide a warning compliant with 27 Cal. Code Regs Section 25601 to each person who has been subject to the unwarned exposures described in the Notice to the extent those exposures are caused by products that were sold in California during the past three years; and 4) that you pay an appropriate civil penalty based on the factors enumerated in California Health and Safety Code Section 25249(b). It should be noted that ERF cannot finalize any settlement of this matter until 70 days have elapsed since the sending of the Notice and unless no public enforcer has begun an enforcement action concerning the violations described in the Notice. Any settlement on behalf of the public interest must be approved by the California Superior Court on noticed motion with 45 days' notice to the California Attorney General. The Attorney General may appear at any approval hearing and oppose a settlement if he or she believes the proposed settlement is not in the public interest. If you wish to discuss settlement of this matter before ERF files suit, please promptly contact ERF's counsel.

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Fredric Evenson

ECOLOGY LAW CENTER
P.O. Box 1000
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SEPTEMBER 12, 2016

NOTICE OF VIOLATIONS
CALIFORNIA SAFE DRINKING WATER AND
TOXIC ENFORCEMENT ACT

| | |
|---|--|
| John P. Ferreira, President Nantucket Pavers, Inc. 71 Fall River Ave. Rehoboth, MA 02769 | |
|---|--|

AND THE PUBLIC PROSECUTORS LISTED ON THE DISTRIBUTION LIST
ACCOMPANYING THE ATTACHED CERTIFICATE OF SERVICE

Re: Violations of Proposition 65 Concerning Carbon Monoxide Exposures from
Wood-burning outdoor heating products, such as fire pits, fire rings, fire tables
and chimeneas

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Below is a non-exclusive list of examples of these types of products. Though specific models or SKU or product numbers are given as examples, this Notice pertains to all models, and all variations, of the specific type of product (wood-burning outdoor heating products, such as fire pits, fire rings, fire tables and chimeneas) of which the named model is an example.

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|-----------------------------------|
| Ledgestone Concrete Fire Pit Kits |
|-----------------------------------|

This non-exclusive list of examples of the type of products that are subject to this Notice is for the recipient's benefit and is not meant to be an exhaustive or comprehensive identification of each specific offending product. It is ERF's position that the alleged Violator is obligated to conduct a good faith investigation into other specific products within the identified category or type that may have been manufactured, distributed or sold (or otherwise within the notice recipient's custody or control) during the past three years, to ensure that clear and reasonable warnings are provided to California citizens prior to purchase, or retroactively if necessary.

These products cause carbon monoxide exposures to occur in peoples yards, at parks and beaches, and everywhere else throughout California where these products are used. These violations are alleged for consumer and environmental exposures.

The noticed parties did not and do not provide people with clear and reasonable warnings before they expose them in California to carbon monoxide. The above-referenced violations have occurred every day since at least September 12, 2013 and will continue every day until clear and reasonable warnings are given.

ERF is a California non-profit corporation dedicated to protecting human and environmental health, including raising awareness of, and reducing exposures to, toxic chemicals. The following individual is the responsible individual within ERF for purposes of this Notice:

James Lamport, Executive Director
Ecological Rights Foundation
867 B Redwood Drive
Garberville, California 95542
Telephone: (707) 923-4372

ERF has retained the following counsel to represent them in this matter (please direct communications to counsel):

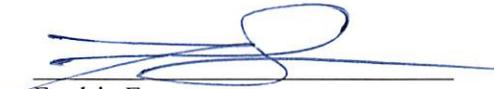
Fredric Evenson
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Fredric Evenson