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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.

A&J MANUFACTURING, L.L.C., BLUE RHINO
GLOBAL SOURCING, INC., THE COMPANION
GROUP, ONWARD MANUFACTURING
COMPANY, LTD.,

Defendants.

Case No. **CGC - 18 - 563746**

COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES

Health & Safety Code § 25249.5 et seq.

(Other)

FILED
San Francisco County Superior Court

JAN 19 2018

CLERK OF THE COURT

BY:  Deputy Clerk

BY FAX
ONE LEGAL LLC

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

4 **INTRODUCTION**

5 1. This Complaint seeks civil penalties and an injunction against A&J Manufacturing, L.L.C.,
6 Blue Rhino Global Sourcing, Inc., The Companion Group, and Onward Manufacturing Company,
7 Ltd., (“Defendants”) to remedy Defendants’ continuing failure to warn individuals in California
8 about exposures to carbon monoxide, a chemical known to the State of California to cause
9 reproductive toxicity. Such exposures have occurred and continue to occur, through the use of
10 charcoal starters that Defendants manufacture, distribute and/or sell in the State (“Products”). These
11 Products are intended to be used with charcoal and are used for lighting charcoal. The combustion
12 of charcoal in charcoal starters causes carbon monoxide to be released into the air. People using
13 charcoal starters, and those standing near the Products when they are in use, inhale the released
14 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 charcoal
19 starters into the California marketplace, exposing users of the Products, including pregnant women,
20 to carbon monoxide. Despite the fact that Defendants expose pregnant women and other consumers
21 and individuals to carbon monoxide, Defendants provide no warnings about the reproductive hazards
22 associated with such exposures. Defendants’ conduct thus violates the warning provision of
23 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 individual person to whom the Defendants conveyed Products during the past three years

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

7 PARTIES

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

14 6. A&J Manufacturing, L.L.C. is a person in the course of doing business within the meaning
15 of Health & Safety Code §25249.11(b). A&J Manufacturing, L.L.C. markets, distributes, and/or sells
16 the Products for sale and use in the State of California.

17 7. Blue Rhino Global Sourcing, Inc. is a person in the course of doing business within the
18 meaning of Health & Safety Code §25249.11(b). Blue Rhino Global Sourcing, Inc. markets,
19 distributes, and/or sells the Products for sale and use in the State of California.

20 8. The Companion Group is a person in the course of doing business within the meaning of
21 Health & Safety Code §25249.11(b). The Companion Group markets, distributes, and/or sells the
22 Products for sale and use in the State of California.

23 9. Onward Manufacturing Company, Ltd. is a person in the course of doing business within the
24 meaning of Health & Safety Code §25249.11(b). Onward Manufacturing Company, Ltd., distributes,
25 and/or sells the Products for sale and use in the State of California.

26 10. Each Defendant employs more than ten people.

27 JURISDICTION

28 11. The Court has jurisdiction over this action pursuant to California Health & Safety Code

1 Section 25249.7. California Constitution Article VI, Section 10 grants the Superior Court "original
2 jurisdiction in all causes except those given by statute to other trial courts." Chapter 6.6 of the
3 Health & Safety Code, which contains the statutes under which this action is brought, does not
4 grant jurisdiction to any other trial court.

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

10 13. Venue is proper in San Francisco County Superior Court because one or more of the
11 violations arise in the County of San Francisco.

12 BACKGROUND

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

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

24 15. On July 1, 1989, the State of California officially listed carbon monoxide as a chemical
25 known to cause developmental reproductive toxicity, which means harm to the developing fetus. On
26 July 1, 1990, carbon monoxide exposures became subject to the clear and reasonable warning
27 requirements under Proposition 65. 27 C.C.R. § 27001(b); Health & Safety Code Section
28 25249.10(b).

16. Plaintiff brings this enforcement action against Defendants pursuant to Health & Safety
Code Section 25249.7(d). Attached hereto and incorporated by reference are a copies of the Notices

1 of Violation served on Blue Rhino Global Sourcing, Inc, and The Companion Group, both dated
2 June, 29, 2017, as well as copies of the Notices of Violation served on A&J Manufacturing, L.L.C.,
3 and Onward Manufacturing Company, Ltd., both dated July 21, 2017, which on those dates
4 EcoRights sent to California's Attorney General, every county District Attorney in California, and to
5 the City Attorneys of every California City with a population greater than 750,000. On those same
6 days, Plaintiff sent substantively identical letters to each Defendant. In compliance with Health &
7 Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), each of the Notices included the following
8 information: (1) the name and address of each violator; (2) the statute violated; (3) the time period
9 during which violations occurred; (4) specific descriptions of the violations, including (a) the routes
10 of exposure to carbon monoxide from the Products, and (b) the specific type of Products sold and
11 used in violation of Proposition 65; and (5) the name of the specific Proposition 65-listed chemical
12 that is the subject of the violations described in each Notice.

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

21 18. None of the public prosecutors with the authority to prosecute violations of Proposition 65
22 has commenced and/or is diligently prosecuting a cause of action against Defendant under Health &
23 Safety Code Section 25249.5 *et seq.*, based on the claims asserted in EcoRights' Notices.

24 19. Defendants both know and intend that individuals will use the Products for lighting
25 charcoal, thus exposing them to carbon monoxide. Under Proposition 65, an exposure is "knowing"
26 where the party responsible for such exposure has "knowledge of the fact that a[n] . . . exposure to a
27 chemical listed pursuant to [Health & Safety Code § 25249.8(a)] is occurring. No knowledge that . .
28 . exposure is unlawful is required." 27 C.C.R. § 25102(n). This knowledge may be either actual or

1 constructive. *See, e.g.*, Final Statement of Reasons Revised (November 4, 1988) (pursuant to former
2 22 C.C.R. Division 2, § 12201). Defendants have been informed of the carbon monoxide exposures
3 caused by the use of Products by the 60-Day Notice of Violation, and the accompanying Certificate
4 of Merit served on them by EcoRights. Defendants also have constructive knowledge of the carbon
5 monoxide exposures caused by Products. As companies that manufacture, market, distribute and/or
6 sell the Products for use in the State of California, Defendants know or should know that carbon
7 monoxide exposures to users of the Products are a natural and foreseeable consequence of
8 Defendants' placing the Products into the stream of commerce.

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

14 21. EcoRights has engaged in good faith efforts to resolve the claims alleged herein prior to
15 filing this complaint.

16 FIRST CAUSE OF ACTION

17 (Violations of Health & Safety Code §25249.6)

18 22. EcoRights realleges and incorporates the facts and allegations contained in the above
19 paragraphs as though specifically set forth herein.

20 23. That each defendant is a person in the course of doing business within the meaning of Health
21 & Safety Code § 25249.11(b) who, by manufacturing, marketing, distribution, sale or otherwise
22 placing the Products into the stream of commerce, violated, violates or threatens to violate
23 Proposition 65.

24 24. Carbon monoxide is a chemical listed by the State of California as known to cause
25 developmental reproductive toxicity.

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

1 26. Defendants have failed and continues to fail, to provide clear and reasonable warnings
2 regarding the reproductive toxicity of carbon monoxide to users of the Products.

3 27. Since at least three years prior to the Notice of Violation Letters, Defendants have violated
4 Proposition 65 by knowingly and intentionally exposing individuals to carbon monoxide without
5 first giving clear and reasonable warnings to such individuals regarding the reproductive toxicity of
6 carbon monoxide.

7 **PRAYER FOR RELIEF**

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

- 9 1. Pursuant to the First Cause of Action, that Defendants be enjoined, restrained, and ordered
10 to comply with the provisions of Section 25249.6 of the California Health & Safety Code;
- 11 2. That Defendants be ordered to make best efforts to identify and locate each individual in
12 California to whom it, or its customers or agents, distributed or sold Products during the past
13 three years, and to provide a warning to each such person that use of the Product will expose
14 that person to a chemical known to cause birth defects and other reproductive harm;
- 15 3. That Defendants be assessed a civil penalty in an amount equal to \$2,500.00 per day per
16 individual exposed to carbon monoxide in violation of Section 25249.6 of the California
17 Health & Safety Code, as the result of Defendants' marketing, distributing, and/or selling the
18 Products for use in California.
- 19 4. That, pursuant to Civil Procedure Code § 1021.5, Defendants be ordered to pay to Plaintiff
20 the attorneys' fees and costs it incurred in bringing this enforcement action; and
- 21 5. For such other relief as this court deems just and proper.
- 22

23 Dated: January 16, 2018

ECOLOGY LAW CENTER

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27 _____
Fredric Evenson, Attorney for Plaintiff
28 ECOLOGICAL RIGHTS FOUNDATION

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

JULY 21, 2017

NOTICE OF VIOLATIONS
CALIFORNIA SAFE DRINKING WATER AND
TOXIC ENFORCEMENT ACT

President or CEO A&J Manufacturing, L.L.C. 2465 Demere Rd., Ste 210 St. Simons Island, GA 31522-1674	John Lee Simms, Registered Agent A&J Manufacturing, L.L.C. 181 7th St. Glynn, Sea Island, GA 31522
Kevin E. Regan, Attorney of Record A&J Manufacturing, L.L.C. P.O. Box 39864 Sea Island, GA 31561	

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
Charcoal Starters

In accord with California Health & Safety Code § 25249.7, Ecological Rights Foundation ("ERF") hereby gives you notice that the above company has violated and is 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 charcoal starters. These products are used primarily for lighting charcoal. Combustion of charcoal produces and exposes people to **carbon monoxide**, a chemical known to the State of California to cause reproductive toxicity. Because the combustion of charcoal causes carbon monoxide to be released into the air,

people using charcoal starters, and others standing near the products when charcoal 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.

Char-Griller Charcoal Starter with Trigger Release Bottom UPC# 789792095806

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 and everywhere else throughout California where these products are used. These violations are alleged for consumer and environmental exposures.

The noticed party did not and does 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 July 21, 2014 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):

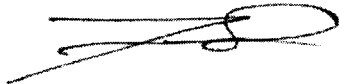
Fredric Evenson
Ecology Law Center
P.O. Box 1000
Santa Cruz, California 95061
Telephone: (831) 454-8216
Email: evenson@ecologylaw.com

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

27 CCR Appendix A
Appendix A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986
(PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. Please refer to the statute and OEHHA's implementing regulations (see citations below) for further information. FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Proposition 65 List." Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html. Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly say that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Periods. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "No Significant Risk Levels" (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level" divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant, it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a "significant amount" of the listed chemical entering any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" level for chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if

one of the governmental officials noted above **initiates** an enforcement action within sixty days of the notice. A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off- premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties any reimbursement for costs and attorney's fees, if the notice was served on or after October 5, 2013, and the alleged violator has done *all* of the following within 14 days of being served notice:

- Corrected the alleged violation;
- Agreed to pay a civil penalty of \$500 (subject to change as noted below) to the private party within 30 days; and
- Notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual **California** Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city of greater than 750,000 population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private party.

A copy of the notice of special compliance procedure and proof of compliance form is included with this notice and can be downloaded from OEHHA's website at: <http://oehha.ca.gov/prop65/law/p65law72003.html>. The notice is reproduced here:

Page 1

Date:

Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

SPECIAL COMPLIANCE PROCEDURE PROOF OF COMPLIANCE

You are receiving this form because the Noticing Party listed above has alleged that you are violating **California Health and Safety Code §25249.6** (Prop. 65).

The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:

1. **You have actually taken the corrective steps that you have certified in this form**
2. **The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice**
3. **The Noticing Party receives the required \$500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.**
4. **This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.**

PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY

The alleged violation is for an exposure to: (check one)

- Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.
- A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination.
- Environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises.
- Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

IMPORTANT NOTES:

1. You have no potential liability under **California Health and Safety Code §25249.6** if your business has nine (9) or fewer employees.
2. Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.

Page 2

Date :

Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE

Certification of Compliance

Accurate completion of this form will demonstrate that you are now in compliance with **California Health and Safety Code §25249.6** for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving

this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):

- Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises;
- Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately its placement on my premises; OR
- Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

Certification

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

Signature of alleged violator or authorized representative Date

Name and title of signatory

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS . . .

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@oehha.ca.gov.

Certificate of Merit
Health & Safety Code Section 25249.7(d)

I, Fredric Evenson, hereby declare:

(1) This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the parties identified in the notices have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.

(2) I am the attorney for the noticing party.

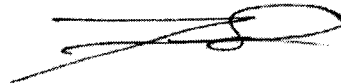
(3) I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the subject of the action.

(4) Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.

(5) The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Date: July 21, 2017

By:



Fredric Evenson

CERTIFICATE OF SERVICE

I am a California resident, over the age of 18 and not a party to this case. My business address is P.O. Box 1000, Santa Cruz, CA 95061.

On July 21, 2017, I served the following:

- 1) Notice of Violations: California Safe Drinking Water and Toxic Enforcement Act
- 2) Certificate of Merit: Health and Safety Code Section 25249.7(d)
- 3) Appendix A: The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary
- 4) Certificate of Service

by enclosing copies of the same in a sealed envelope addressed to each person shown below and depositing the envelope in the U.S. mail with postage fully prepaid for delivery by Certified Mail. Place of mailing: Santa Cruz, CA.

President or CEO A&J Manufacturing, L.L.C. 2465 Demere Rd., Ste 210 St. Simons Island, GA 31522-1674	John Lee Simms, Registered Agent A&J Manufacturing, L.L.C. 181 7th St. Glynn, Sea Island, GA 31522
Kevin E. Regan, Attorney of Record A&J Manufacturing, L.L.C. P.O. Box 39864 Sea Island, GA 31561	

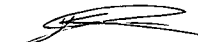
On July 21, 2017, I also served the following:

- 1) Notice of Violations: California Safe Drinking Water and Toxic Enforcement Act
- 2) Certificate of Merit: Health and Safety Code Section 25249.7(d)
- 3) Certificate of Merit (Attorney General Copy): Factual information sufficient to establish the basis of the Certificate of Merit (only sent to Attorney General)
- 4) Certificate of Service

by enclosing copies of the same in sealed envelopes addressed to each of the public prosecutors listed on the attached Service List with physical mailing addresses, and depositing the envelopes in the U.S. mail with postage fully prepaid for delivery by First Class Mail. Place of mailing: Santa Cruz, CA.

by sending portable document format (.pdf) files of the same to the electronic mail addresses to each of the public prosecutors identified by the California Attorney General as having authorized electronic service of notices. These public enforcement agencies appear on the attached Service List with their electronic mail addresses.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed July 21, 2017, at Santa Cruz, CA.



Yair Chaver

Service List – Public Prosecutors

Office of the District Attorney Alameda County 1225 Fallon Street, Room 900 Oakland, CA 94612	Office of the District Attorney Lassen County mlatimer@co.lassen.ca.us	Office of the District Attorney San Benito County 419 4th Street Hollister, CA 95023	Office of the District Attorney Tehama County P.O. Box 519 Red Bluff, CA 96080
Office of the District Attorney Alpine County P.O. Box 248 Markleeville, CA 96120	Office of the District Attorney Los Angeles County 211 W. Temple Street, Suite 1200 Los Angeles, CA 90012	Office of the District Attorney San Bernardino County 303 W. Third Street San Bernardino, CA 92415	Office of the District Attorney Trinity County P.O. Box 310 Weaverville, CA 96093
Office of the District Attorney Amador County 708 Court Street, #202 Jackson, CA 95642	Office of the District Attorney Madera County 209 West Yosemite Avenue Madera, CA 93637	Office of the District Attorney San Diego County 330 W. Broadway, Suite 1300 San Diego, CA 92101	Office of the District Attorney Tulare County Prop65@co.tulare.ca.us
Office of the District Attorney Butte County 25 County Center Drive Oroville, CA 95965	Office of the District Attorney Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	Office of the District Attorney San Francisco County gregory.alker@sfgov.org	Office of the District Attorney Tuolumne County 423 N. Washington Street Sonora, CA 95370
Office of the District Attorney Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	Office of the District Attorney Mariposa County P.O. Box 730 Mariposa, CA 95338	Office of the District Attorney San Joaquin County DAConsumer.Environmental@sjcda.org	Office of the District Attorney Ventura County daspecialops@ventura.org
Office of the District Attorney Colusa County 346 5th Street, Suite 101 Colusa, CA 95932	Office of the District Attorney Mendocino County P.O. Box 1000 Ukiah, CA 95482	Office of the District Attorney San Luis Obispo County edobroth@co.slo.ca.us	Office of the District Attorney Yolo County cfejd@yolocounty.org
Office of the District Attorney Contra Costa County sgrassini@contracostada.org	Office of the District Attorney Merced County 550 West Main Street Merced, CA 95340	Office of the District Attorney San Mateo County 400 County Center, Third Floor Redwood City, CA 94063	Office of the District Attorney Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
Office of the District Attorney Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	Office of the District Attorney Modoc County 204 S. Court Street Room 202 Alturas, CA 96101	Office of the District Attorney Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	Oakland City Attorney City Hall, 6th Floor 1 Frank Ogawa Plaza Oakland, California 94612
Office of the District Attorney El Dorado County 515 Main Street Placerville, CA 95667	Office of the District Attorney Mono County P.O. Box 617 Bridgeport, CA 93517	Office of the District Attorney Santa Clara County EPU@da.sccgov.org	Office of the City Attorney City of San Francisco City Hall, Room 234 1 Dr. Carlton B. Goodlett Pl. San Francisco, CA 94102
Office of the District Attorney Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	Office of the District Attorney Monterey County Prop65DA@co.monterey.ca.us	Office of the District Attorney Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	Office of the City Attorney City of Sacramento 915 I Street, 4th Floor Sacramento, CA 95814
Office of the District Attorney Glenn County P.O. Box 430 Willows, CA 95988	Office of the District Attorney Napa County CEPD@countyofnapa.org	Office of the District Attorney Shasta County 1355 West Street Redding, CA 96001	Office of the City Attorney City of San Jose 200 E. Santa Clara St. San Jose, CA 95113
Office of the District Attorney Humboldt County 825 5th Street, 4th Floor Eureka, CA 95501	Office of the District Attorney Nevada County 201 Commercial Street Nevada City, CA 95959	Office of the District Attorney Sierra County P.O. Box 457 Downieville, CA 95936	Office of the City Attorney City of Los Angeles 200 N. Main Street, Suite 800 Los Angeles, CA 90012
Office of the District Attorney Imperial County 940 West Main Street, Suite 102 El Centro, CA 92243	Office of the District Attorney Orange County 401 Civic Center Drive West Santa Ana, CA 92701	Office of the District Attorney Siskiyou County P.O. Box 986 Yreka, CA 96097	Office of the City Attorney City of San Diego 1200 Third Ave., Suite 1620 San Diego, CA 92101
Office of the District Attorney Inyo County P.O. Box D Independence, CA 93526	Office of the District Attorney Placer County 10810 Justice Center Drive Roseville, CA 95678	Office of the District Attorney Solano County 675 Texas Street, Suite 4500 Fairfield, CA 94533	Proposition 65 Enforcement Reporting Attn: Prop 65 Coordinator 1515 Clay Street P.O. Box 70550 Oakland, CA 94612
Office of the District Attorney Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	Office of the District Attorney Plumas County 520 Main Street, Room 404 Quincy, CA 95971	Office of the District Attorney Sonoma County jbarnes@sonoma-county.org	
Office of the District Attorney Kings County 1400 West Lacey Blvd. Hanford, CA 93230	Office of the District Attorney Riverside County Prop65@rivcoda.org	Office of the District Attorney Stanislaus County 832 12th Street, Suite 300 Modesto, CA 95354	
Office of the District Attorney Lake County 255 N. Forbes Street Lakeport, CA 95453	Office of the District Attorney Sacramento County Prop65@sacda.org	Office of the District Attorney Sutter County 446 Second Street, Suite 102 Yuba City, CA 95991	

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

JUNE 29, 2017

NOTICE OF VIOLATIONS
CALIFORNIA SAFE DRINKING WATER AND
TOXIC ENFORCEMENT ACT

CT Corporation System, Registered Agent Blue Rhino Global Sourcing, Inc. 818 West Seventh St., Suite 930 Los Angeles, CA 90017	Stephen L. Wambold, President Blue Rhino Global Sourcing, Inc. 7500 College Blvd., Suite 1000 Overland Park, KS 66210
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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
Charcoal Starters

In accord with California Health & Safety Code § 25249.7, Ecological Rights Foundation ("ERF") hereby gives you notice that the above company has violated and is 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 charcoal starters. These products are used primarily for lighting charcoal. Combustion of charcoal produces and exposes people to **carbon monoxide**, a chemical known to the State of California to cause reproductive toxicity. Because the combustion of charcoal causes carbon monoxide to be released into the air, people using charcoal starters, and others standing near the products when charcoal 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.

Mr. Bar-B-Q Charcoal Chimney Starter SKU# 07690321202

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 and everywhere else throughout California where these products are used. These violations are alleged for consumer and environmental exposures.

The noticed party did not and does 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 29, 2014 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):

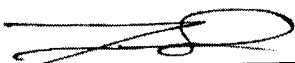
Fredric Evenson
Ecology Law Center
P.O. Box 1000
Santa Cruz, California 95061
Telephone: (831) 454-8216
Email: evenson@ecologylaw.com

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

27 CCR Appendix A
Appendix A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986
(PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. Please refer to the statute and OEHHA's implementing regulations (see citations below) for further information. FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 ([Health and Safety Code Sections 25249.5 through 25249.13](http://www.oehha.ca.gov/prop65/law/P65law72003.html)) is available online at: <http://www.oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in [Title 27 of the California Code of Regulations, sections 25102 through 27001](http://www.oehha.ca.gov/prop65/law/P65Regs.html).¹ These implementing regulations are available online at: <http://www.oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Proposition 65 List." Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html. Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly say that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Periods. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "No Significant Risk Levels" (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level" divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a "significant amount" of the listed chemical entering any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" level for chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if

one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off- premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties any reimbursement for costs and attorney's fees, if the notice was served on or after October 5, 2013, and the alleged violator has done *all* of the following within 14 days of being served notice:

- Corrected the alleged violation;
- Agreed to pay a civil penalty of \$500 (subject to change as noted below) to the private party within 30 days; and
- Notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private-party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city of greater than 750,000 population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private-party.

A copy of the notice of special compliance procedure and proof of compliance form is included with this notice and can be downloaded from OEHA's website at: <http://oehha.ca.gov/prop65/law/p65law72003.html>. The notice is reproduced here:

Page 1

Date:

Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

SPECIAL COMPLIANCE PROCEDURE PROOF OF COMPLIANCE

You are receiving this form because the Noticing Party listed above has alleged that you are violating California Health and Safety Code §25249.6 (Prop. 65).

The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:

1. You have actually taken the corrective steps that you have certified in this form
2. The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice
3. The Noticing Party receives the required \$500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.
4. This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.

PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY

The alleged violation is for an exposure to: (check one)

Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.

A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination.

Environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises.

Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

IMPORTANT NOTES:

1. You have no potential liability under California Health and Safety Code §25249.6 if your business has nine (9) or fewer employees.
2. Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.

Page 2

Date :

Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE

Certification of Compliance

Accurate completion of this form will demonstrate that you are now in compliance with California Health and Safety Code §25249.6 for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving

this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):

- Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises;
- Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately its placement on my premises; OR
- Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

Certification

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

Signature of alleged violator or authorized representative Date

Name and title of signatory

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS . . .

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@oehha.ca.gov.

Certificate of Merit
Health & Safety Code Section 25249.7(d)

I, Fredric Evenson, hereby declare:

- (1) This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the parties identified in the notices have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
- (2) I am the attorney for the noticing party.
- (3) I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the subject of the action.
- (4) Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
- (5) The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Date: June 29, 2017

By: 

Fredric Evenson

CERTIFICATE OF SERVICE

I am a California resident, over the age of 18 and not a party to this case. My business address is P.O. Box 1000, Santa Cruz, CA 95061.

On June 30, 2017, I served the following:

- 1) Notice of Violations: California Safe Drinking Water and Toxic Enforcement Act
- 2) Certificate of Merit: Health and Safety Code Section 25249.7(d)
- 3) Appendix A: The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary
- 4) Certificate of Service

by enclosing copies of the same in a sealed envelope addressed to each person shown below and depositing the envelope in the U.S. mail with postage fully prepaid for delivery by Certified Mail. Place of mailing: Santa Cruz, CA.

CT Corporation System, Registered Agent Blue Rhino Global Sourcing, Inc. 818 West Seventh St., Suite 930 Los Angeles, CA 90017	Stephen L. Wambold, President Blue Rhino Global Sourcing, Inc. 7500 College Blvd., Suite 1000 Overland Park, KS 66210
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On July 3, 2017, I also served the following:

- 1) Notice of Violations: California Safe Drinking Water and Toxic Enforcement Act
- 2) Certificate of Merit: Health and Safety Code Section 25249.7(d)
- 3) Certificate of Merit (Attorney General Copy): Factual information sufficient to establish the basis of the Certificate of Merit (only sent to Attorney General)
- 4) Certificate of Service

by enclosing copies of the same in sealed envelopes addressed to each of the public prosecutors listed on the attached Service List with physical mailing addresses, and depositing the envelopes in the U.S. mail with postage fully prepaid for delivery by First Class Mail. Place of mailing: Santa Cruz, CA.

by sending portable document format (.pdf) files of the same to the electronic mail addresses to each of the public prosecutors identified by the California Attorney General as having authorized electronic service of notices. These public enforcement agencies appear on the attached Service List with their electronic mail addresses.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed July 3, 2017, at Santa Cruz, CA.



Yair Chaver

Service List – Public Prosecutors

Office of the District Attorney Alameda County 1225 Fallon Street, Room 900 Oakland, CA 94612	Office of the District Attorney Lassen County mlatimer@co.lassen.ca.us	Office of the District Attorney San Benito County 419 4th Street Hollister, CA 95023	Office of the District Attorney Tehama County P.O. Box 519 Red Bluff, CA 96080
Office of the District Attorney Alpine County P.O. Box 248 Markleeville, CA 96120	Office of the District Attorney Los Angeles County 211 W. Temple Street, Suite 1200 Los Angeles, CA 90012	Office of the District Attorney San Bernardino County 303 W. Third Street San Bernardino, CA 92415	Office of the District Attorney Trinity County P.O. Box 310 Weaverville, CA 96093
Office of the District Attorney Amador County 708 Court Street, #202 Jackson, CA 95642	Office of the District Attorney Madera County 209 West Yosemite Avenue Madera, CA 93637	Office of the District Attorney San Diego County 330 W. Broadway, Suite 1300 San Diego, CA 92101	Office of the District Attorney Tulare County Prop65@co.tulare.ca.us
Office of the District Attorney Butte County 25 County Center Drive Oroville, CA 95965	Office of the District Attorney Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	Office of the District Attorney San Francisco County gregory.alker@sfgov.org	Office of the District Attorney Tuolumne County 423 N. Washington Street Sonora, CA 95370
Office of the District Attorney Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	Office of the District Attorney Mariposa County P.O. Box 730 Mariposa, CA 95338	Office of the District Attorney San Joaquin County DAConsumer.Environmental@sjcda.org	Office of the District Attorney Ventura County daspecialops@ventura.org
Office of the District Attorney Colusa County 346 5th Street, Suite 101 Colusa, CA 95932	Office of the District Attorney Mendocino County P.O. Box 1000 Ukiah, CA 95482	Office of the District Attorney San Luis Obispo County edobroth@co.slo.ca.us	Office of the District Attorney Yolo County cfepd@yolocounty.org
Office of the District Attorney Contra Costa County sgrassini@contracostada.org	Office of the District Attorney Merced County 550 West Main Street Merced, CA 95340	Office of the District Attorney San Mateo County 400 County Center, Third Floor Redwood City, CA 94063	Office of the District Attorney Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
Office of the District Attorney Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	Office of the District Attorney Modoc County 204 S. Court Street Room 202 Alturas, CA 96101	Office of the District Attorney Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	Oakland City Attorney City Hall, 6th Floor 1 Frank Ogawa Plaza Oakland, California 94612
Office of the District Attorney El Dorado County 515 Main Street Placerville, CA 95667	Office of the District Attorney Mono County P.O. Box 617 Bridgeport, CA 93517	Office of the District Attorney Santa Clara County EPU@da.sccgov.org	Office of the City Attorney City of San Francisco City Hall, Room 234 1 Dr. Carlton B. Goodlett Pl. San Francisco, CA 94102
Office of the District Attorney Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	Office of the District Attorney Monterey County Prop65DA@co.monterey.ca.us	Office of the District Attorney Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	Office of the City Attorney City of Sacramento 915 I Street, 4th Floor Sacramento, CA 95814
Office of the District Attorney Glenn County P.O. Box 430 Willows, CA 95988	Office of the District Attorney Napa County CEPD@countyofnapa.org	Office of the District Attorney Shasta County 1355 West Street Redding, CA 96001	Office of the City Attorney City of San Jose 200 E. Santa Clara St. San Jose, CA 95113
Office of the District Attorney Humboldt County 825 5th Street, 4 th Floor Eureka, CA 95501	Office of the District Attorney Nevada County 201 Commercial Street Nevada City, CA 95959	Office of the District Attorney Sierra County P.O. Box 457 Downieville, CA 95936	Office of the City Attorney City of Los Angeles 200 N. Main Street, Suite 800 Los Angeles, CA 90012
Office of the District Attorney Imperial County 940 West Main Street, Suite 102 El Centro, CA 92243	Office of the District Attorney Orange County 401 Civic Center Drive West Santa Ana, CA 92701	Office of the District Attorney Siskiyou County P.O. Box 986 Yreka, CA 96097	Office of the City Attorney City of San Diego 1200 Third Ave., Suite 1620 San Diego, CA 92101
Office of the District Attorney Inyo County P.O. Box D Independence, CA 93526	Office of the District Attorney Placer County 10810 Justice Center Drive Roseville, CA 95678	Office of the District Attorney Solano County 675 Texas Street, Suite 4500 Fairfield, CA 94533	Proposition 65 Enforcement Reporting Attn: Prop 65 Coordinator 1515 Clay Street P.O. Box 70550 Oakland, CA 94612
Office of the District Attorney Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	Office of the District Attorney Plumas County 520 Main Street, Room 404 Quincy, CA 95971	Office of the District Attorney Sonoma County jbarnes@sonoma-county.org	
Office of the District Attorney Kings County 1400 West Lacey Blvd. Hanford, CA 93230	Office of the District Attorney Riverside County Prop65@rivcoda.org	Office of the District Attorney Stanislaus County 832 12th Street, Suite 300 Modesto, CA 95354	
Office of the District Attorney Lake County 255 N. Forbes Street Lakeport, CA 95453	Office of the District Attorney Sacramento County Prop65@sacda.org	Office of the District Attorney Sutter County 446 Second Street, Suite 102 Yuba City, CA 95991	

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

JUNE 29, 2017

NOTICE OF VIOLATIONS
CALIFORNIA SAFE DRINKING WATER AND
TOXIC ENFORCEMENT ACT

President or CEO The Companion Group 1250 9th Street Berkeley, CA 94710	Jeffery P. Bezos Or Current President or CEO Amazon.com, Inc. 410 Terry Avenue North Seattle, Washington 98109-5210
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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
Charcoal Starters

In accord with California Health & Safety Code § 25249.7, Ecological Rights Foundation ("ERF") hereby gives you notice that the above company has violated and is 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 charcoal starters. These products are used primarily for lighting charcoal. Combustion of charcoal produces and exposes people to **carbon monoxide**, a chemical known to the State of California to cause reproductive toxicity. Because the combustion of charcoal causes carbon monoxide to be released into the air, people using charcoal starters, and others standing near the products when charcoal 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.

Charcoal Companion Charcoal Starter SKU# 0500167404438

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 and everywhere else throughout California where these products are used. These violations are alleged for consumer and environmental exposures.

The noticed party did not and does 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 29, 2014 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):

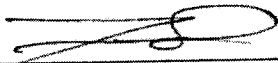
Fredric Evenson
Ecology Law Center
P.O. Box 1000
Santa Cruz, California 95061
Telephone: (831) 454-8216
Email: evenson@ecologylaw.com

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

27 CCR Appendix A
Appendix A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986
(PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. Please refer to the statute and OEHHA's implementing regulations (see citations below) for further information. FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Proposition 65 List." Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html. Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly say that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Periods. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "No Significant Risk Levels" (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level" divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a "significant amount" of the listed chemical entering any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" level for chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if

one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off- premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties any reimbursement for costs and attorney's fees, if the notice was served on or after October 5, 2013, and the alleged violator has done *all* of the following within 14 days of being served notice:

- Corrected the alleged violation;
- Agreed to pay a civil penalty of \$500 (subject to change as noted below) to the private party within 30 days; and
- Notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city of greater than 750,000 population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private party.

A copy of the notice of special compliance procedure and proof of compliance form is included with this notice and can be downloaded from OEHA's website at: <http://oehha.ca.gov/prop65/law/p65law72003.html>. The notice is reproduced here:

Page 1

Date:

Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

SPECIAL COMPLIANCE PROCEDURE PROOF OF COMPLIANCE

You are receiving this form because the Noticing Party listed above has alleged that you are violating California Health and Safety Code §25249.6 (Prop. 65).

The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:

1. You have actually taken the corrective steps that you have certified in this form
2. The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice
3. The Noticing Party receives the required \$500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.
4. This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.

PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY

The alleged violation is for an exposure to: (check one)

Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.

A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination.

Environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises.

Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

IMPORTANT NOTES:

1. You have no potential liability under California Health and Safety Code §25249.6 if your business has nine (9) or fewer employees.
2. Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.

Page 2

Date :

Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE

Certification of Compliance

Accurate completion of this form will demonstrate that you are now in compliance with California Health and Safety Code §25249.6 for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving

this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):

- Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises;
- Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately its placement on my premises; OR
- Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

Certification

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

Signature of alleged violator or authorized representative Date

Name and title of signatory

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS . . .

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@oehha.ca.gov.

Certificate of Merit
Health & Safety Code Section 25249.7(d)

I, Fredric Evenson, hereby declare:

- (1) This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the parties identified in the notices have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
- (2) I am the attorney for the noticing party.
- (3) I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the subject of the action.
- (4) Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
- (5) The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Date: June 29, 2017

By: 

Fredric Evenson

CERTIFICATE OF SERVICE

I am a California resident, over the age of 18 and not a party to this case. My business address is P.O. Box 1000, Santa Cruz, CA 95061.

On June 30, 2017, I served the following:

- 1) Notice of Violations: California Safe Drinking Water and Toxic Enforcement Act
- 2) Certificate of Merit: Health and Safety Code Section 25249.7(d)
- 3) Appendix A: The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary
- 4) Certificate of Service

by enclosing copies of the same in a sealed envelope addressed to each person shown below and depositing the envelope in the U.S. mail with postage fully prepaid for delivery by Certified Mail. Place of mailing: Santa Cruz, CA.

President or CEO The Companion Group 1250 9th Street Berkeley, CA 94710	Jeffery P. Bezos Or Current President or CEO Amazon.com, Inc. 410 Terry Avenue North Seattle, Washington 98109-5210
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On July 3, 2017, I also served the following:

- 1) Notice of Violations: California Safe Drinking Water and Toxic Enforcement Act
- 2) Certificate of Merit: Health and Safety Code Section 25249.7(d)
- 3) Certificate of Merit (Attorney General Copy): Factual information sufficient to establish the basis of the Certificate of Merit (only sent to Attorney General)
- 4) Certificate of Service

by enclosing copies of the same in sealed envelopes addressed to each of the public prosecutors listed on the attached Service List with physical mailing addresses, and depositing the envelopes in the U.S. mail with postage fully prepaid for delivery by First Class Mail. Place of mailing: Santa Cruz, CA.

by sending portable document format (.pdf) files of the same to the electronic mail addresses to each of the public prosecutors identified by the California Attorney General as having authorized electronic service of notices. These public enforcement agencies appear on the attached Service List with their electronic mail addresses.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed July 3, 2017, at Santa Cruz, CA.



Yair Chaver

Service List – Public Prosecutors

Office of the District Attorney Alameda County 1225 Fallon Street, Room 900 Oakland, CA 94612	Office of the District Attorney Lassen County mlatimer@co.lassen.ca.us	Office of the District Attorney San Benito County 419 4th Street Hollister, CA 95023	Office of the District Attorney Tehama County P.O. Box 519 Red Bluff, CA 96080
Office of the District Attorney Alpine County P.O. Box 248 Markleeville, CA 96120	Office of the District Attorney Los Angeles County 211 W. Temple Street, Suite 1200 Los Angeles, CA 90012	Office of the District Attorney San Bernardino County 303 W. Third Street San Bernardino, CA 92415	Office of the District Attorney Trinity County P.O. Box 310 Weaverville, CA 96093
Office of the District Attorney Amador County 708 Court Street, #202 Jackson, CA 95642	Office of the District Attorney Madera County 209 West Yosemite Avenue Madera, CA 93637	Office of the District Attorney San Diego County 330 W. Broadway, Suite 1300 San Diego, CA 92101	Office of the District Attorney Tulare County Prop65@co.tulare.ca.us
Office of the District Attorney Butte County 25 County Center Drive Oroville, CA 95965	Office of the District Attorney Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	Office of the District Attorney San Francisco County gregory.aliker@sfgov.org	Office of the District Attorney Tuolumne County 423 N. Washington Street Sonora, CA 95370
Office of the District Attorney Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	Office of the District Attorney Mariposa County P.O. Box 730 Mariposa, CA 95338	Office of the District Attorney San Joaquin County DAConsumer.Environmental@sjcda.org	Office of the District Attorney Ventura County daspecialops@ventura.org
Office of the District Attorney Colusa County 346 5th Street, Suite 101 Colusa, CA 95932	Office of the District Attorney Mendocino County P.O. Box 1000 Ukiah, CA 95482	Office of the District Attorney San Luis Obispo County edobroth@co.slo.ca.us	Office of the District Attorney Yolo County cfepd@yolocounty.org
Office of the District Attorney Contra Costa County sgrassini@contracostada.org	Office of the District Attorney Merced County 550 West Main Street Merced, CA 95340	Office of the District Attorney San Mateo County 400 County Center, Third Floor Redwood City, CA 94063	Office of the District Attorney Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
Office of the District Attorney Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	Office of the District Attorney Modoc County 204 S. Court Street Room 202 Alturas, CA 96101	Office of the District Attorney Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	Oakland City Attorney City Hall, 6th Floor 1 Frank Ogawa Plaza Oakland, California 94612
Office of the District Attorney El Dorado County 515 Main Street Placerville, CA 95667	Office of the District Attorney Mono County P.O. Box 617 Bridgeport, CA 93517	Office of the District Attorney Santa Clara County EPU@da.sccgov.org	Office of the City Attorney City of San Francisco City Hall, Room 234 1 Dr. Carlton B. Goodlett Pl. San Francisco, CA 94102
Office of the District Attorney Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	Office of the District Attorney Monterey County Prop65DA@co.monterey.ca.us	Office of the District Attorney Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	Office of the City Attorney City of Sacramento 915 I Street, 4th Floor Sacramento, CA 95814
Office of the District Attorney Glenn County P.O. Box 430 Willows, CA 95988	Office of the District Attorney Napa County CEPD@countyofnapa.org	Office of the District Attorney Shasta County 1355 West Street Redding, CA 96001	Office of the City Attorney City of San Jose 200 E. Santa Clara St. San Jose, CA 95113
Office of the District Attorney Humboldt County 825 5th Street, 4 th Floor Eureka, CA 95501	Office of the District Attorney Nevada County 201 Commercial Street Nevada City, CA 95959	Office of the District Attorney Sierra County P.O. Box 457 Downieville, CA 95936	Office of the City Attorney City of Los Angeles 200 N. Main Street, Suite 800 Los Angeles, CA 90012
Office of the District Attorney Imperial County 940 West Main Street, Suite 102 El Centro, CA 92243	Office of the District Attorney Orange County 401 Civic Center Drive West Santa Ana, CA 92701	Office of the District Attorney Siskiyou County P.O. Box 986 Yreka, CA 96097	Office of the City Attorney City of San Diego 1200 Third Ave., Suite 1620 San Diego, CA 92101
Office of the District Attorney Inyo County P.O. Box D Independence, CA 93526	Office of the District Attorney Placer County 10810 Justice Center Drive Roseville, CA 95678	Office of the District Attorney Solano County 675 Texas Street, Suite 4500 Fairfield, CA 94533	Proposition 65 Enforcement Reporting Attn: Prop 65 Coordinator 1515 Clay Street P.O. Box 70550 Oakland, CA 94612
Office of the District Attorney Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	Office of the District Attorney Plumas County 520 Main Street, Room 404 Quincy, CA 95971	Office of the District Attorney Sonoma County jbarnes@sonoma-county.org	
Office of the District Attorney Kings County 1400 West Lacey Blvd. Hanford, CA 93230	Office of the District Attorney Riverside County Prop65@rivcoda.org	Office of the District Attorney Stanislaus County 832 12th Street, Suite 300 Modesto, CA 95354	
Office of the District Attorney Lake County 255 N. Forbes Street Lakeport, CA 95453	Office of the District Attorney Sacramento County Prop65@sacda.org	Office of the District Attorney Sutter County 446 Second Street, Suite 102 Yuba City, CA 95991	

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

JULY 21, 2017

NOTICE OF VIOLATIONS
CALIFORNIA SAFE DRINKING WATER AND
TOXIC ENFORCEMENT ACT

Richard McHenry, Registered Agent Onward Manufacturing Company, Ltd. 1000 E Market St, Huntington IN, 46750, USA	Ted Witzel, President Onward Manufacturing Company, Ltd. 585 Kumpf Dr. Waterloo, Ontario N2V 1K3, Canada
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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
Charcoal Starters

In accord with California Health & Safety Code § 25249.7, Ecological Rights Foundation ("ERF") hereby gives you notice that the above company has violated and is 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 charcoal starters. These products are used primarily for lighting charcoal. Combustion of charcoal produces and exposes people to **carbon monoxide**, a chemical known to the State of California to cause reproductive toxicity. Because the combustion of charcoal causes carbon monoxide to be released into the air, people using charcoal starters, and others standing near the products when charcoal 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.

Broil King Chimney Charcoal Starter UPC# 060162639807
Grillpro Charcoal Chimney Starter UPC# 060162394706

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 and everywhere else throughout California where these products are used. These violations are alleged for consumer and environmental exposures.

The noticed party did not and does 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 July 21, 2014 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):

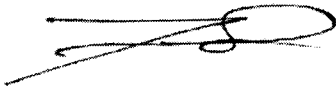
Fredric Evenson
Ecology Law Center
P.O. Box 1000
Santa Cruz, California 95061
Telephone: (831) 454-8216
Email: evenson@ecologylaw.com

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

27 CCR Appendix A
Appendix A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986
(PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. Please refer to the statute and OEHHA's implementing regulations (see citations below) for further information. FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at:

<http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Proposition 65 List." Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly say that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Periods. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "No Significant Risk Levels" (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level" divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a "significant amount" of the listed chemical entering any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" level for chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if

one of the governmental officials noted above states an enforcement action within sixty days of the notice. A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off- premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties any reimbursement for costs and attorney's fees, if the notice was served on or after October 5, 2013, and the alleged violator has done all of the following within 14 days of being served notice:

- Corrected the alleged violation;
 - Agreed to pay a civil penalty of \$500 (subject to change as noted below) to the private party within 30 days; and
 - Notified the private party serving the notice in writing that the violation has been corrected.
- The written notification to the private-party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city of greater than 750,000 population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private-party.

A copy of the notice of special compliance procedure and proof of compliance form is included with this notice and can be downloaded from OEHHA's website at: <http://oehha.ca.gov/prop65/law/p65law72003.html>. The notice is reproduced here:

Page 1

Date:

Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

SPECIAL COMPLIANCE PROCEDURE PROOF OF COMPLIANCE

You are receiving this form because the Noticing Party listed above has alleged that you are violating California Health and Safety Code §25249.6 (Prop. 65).

The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:

1. You have actually taken the corrective steps that you have certified in this form
2. The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice
3. The Noticing Party receives the required \$500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.
4. This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.

PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY

The alleged violation is for an exposure to: (check one)

- Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.
- A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination.
- Environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises.
- Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

IMPORTANT NOTES:

1. You have no potential liability under California Health and Safety Code §25249.6 if your business has nine (9) or fewer employees.
2. Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.

Page 2

Date :

Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE

Certification of Compliance

Accurate completion of this form will demonstrate that you are now in compliance with California Health and Safety Code §25249.6 for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving

this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):

- Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises;
- Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately its placement on my premises; OR
- Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

Certification

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

Signature of alleged violator or authorized representative Date

Name and title of signatory

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS . . .

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@oehha.ca.gov.

Certificate of Merit
Health & Safety Code Section 25249.7(d)

I, Fredric Evenson, hereby declare:

(1) This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the parties identified in the notices have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.

(2) I am the attorney for the noticing party.

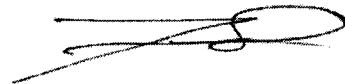
(3) I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the subject of the action.

(4) Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.

(5) The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Date: July 21, 2017

By:



Fredric Evenson

CERTIFICATE OF SERVICE

I am a California resident, over the age of 18 and not a party to this case. My business address is P.O. Box 1000, Santa Cruz, CA 95061.

On July 21, 2017, I served the following:

- 1) Notice of Violations: California Safe Drinking Water and Toxic Enforcement Act
- 2) Certificate of Merit: Health and Safety Code Section 25249.7(d)
- 3) Appendix A: The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary
- 4) Certificate of Service

by enclosing copies of the same in a sealed envelope addressed to each person shown below and depositing the envelope in the U.S. mail with postage fully prepaid for delivery by Certified Mail. Place of mailing: Santa Cruz, CA.

Richard McHenry, Registered Agent Onward Manufacturing Company, Ltd. 1000 E Market St, Huntington IN, 46750, USA	Ted Witzel, President Onward Manufacturing Company, Ltd. 585 Kumpf Dr. Waterloo, Ontario N2V 1K3, Canada
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On July 21, 2017, I also served the following:

- 1) Notice of Violations: California Safe Drinking Water and Toxic Enforcement Act
- 2) Certificate of Merit: Health and Safety Code Section 25249.7(d)
- 3) Certificate of Merit (Attorney General Copy): Factual information sufficient to establish the basis of the Certificate of Merit (only sent to Attorney General)
- 4) Certificate of Service

by enclosing copies of the same in sealed envelopes addressed to each of the public prosecutors listed on the attached Service List with physical mailing addresses, and depositing the envelopes in the U.S. mail with postage fully prepaid for delivery by First Class Mail. Place of mailing: Santa Cruz, CA.

by sending portable document format (.pdf) files of the same to the electronic mail addresses to each of the public prosecutors identified by the California Attorney General as having authorized electronic service of notices. These public enforcement agencies appear on the attached Service List with their electronic mail addresses.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed July 21, 2017, at Santa Cruz, CA.



Yair Chaver

Service List – Public Prosecutors

Office of the District Attorney Alameda County 1225 Fallon Street, Room 900 Oakland, CA 94612	Office of the District Attorney Lassen County mlatimer@co.lassen.ca.us	Office of the District Attorney San Benito County 419 4th Street Hollister, CA 95023	Office of the District Attorney Tehama County P.O. Box 519 Red Bluff, CA 96080
Office of the District Attorney Alpine County P.O. Box 248 Markleeville, CA 96120	Office of the District Attorney Los Angeles County 211 W. Temple Street, Suite 1200 Los Angeles, CA 90012	Office of the District Attorney San Bernardino County 303 W. Third Street San Bernardino, CA 92415	Office of the District Attorney Trinity County P.O. Box 310 Weaverville, CA 96093
Office of the District Attorney Amador County 708 Court Street, #202 Jackson, CA 95642	Office of the District Attorney Madera County 209 West Yosemite Avenue Madera, CA 93637	Office of the District Attorney San Diego County 330 W. Broadway, Suite 1300 San Diego, CA 92101	Office of the District Attorney Tulare County Prop65@co.tulare.ca.us
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