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8 *Attorneys for Plaintiff*

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

02/28/2024
Clerk of the Court

BY: JAMES XIONG
Deputy Clerk

CGC-24-612719

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

9 PRECILA BALABBO,

10 Plaintiff,

11 vs.

12 ALIN PARTY SUPPLY CO.,

13 Defendant.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

**(Violation of Health & Safety Code § 25249.5 et
seq.)**

14 Plaintiff Precila Balabbo (“Plaintiff”), by and through her attorneys, alleges the following
15 cause of action in the public interest of the citizens of the State of California.

16 **BACKGROUND OF THE CASE**

17 1. Plaintiff brings this representative action on behalf of all California citizens to
18 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
19 the Health and Safety Code § 25249.5 et seq (“Proposition 65”), which reads, in relevant part,
20 “[n]o person in the course of doing business shall knowingly and intentionally expose any
21 individual to a chemical known to the state to cause cancer or reproductive toxicity without first
22 giving clear and reasonable warning to such individual ...”. Health & Safety Code § 25249.6.

23 2. This complaint is a representative action brought by Plaintiff in the public interest
24 of the citizens of the State of California to enforce the People’s right to be informed of the health
25 hazards caused by exposure to lead and/or diethanolamine (DEA), toxic chemicals found in
26 products sold and/or distributed by defendant Alin Party Supply Co. (“Alin” or “Defendant”) in
27 California.

1 3. DEA¹ is a harmful chemical known to the State of California to cause cancer. Lead²
2 is a harmful chemical known to the State of California to cause cancer and birth defects or other
3 reproductive harm.

4 4. Proposition 65 requires all businesses with ten (10) or more employees that operate
5 within California or sell products therein to comply with Proposition 65 regulations. Included in
6 such regulations is the requirement that businesses must label any product containing a Proposition
7 65-listed chemical that will create an exposure above safe harbor levels with a “clear and
8 reasonable” warning before “knowingly and intentionally” exposing any person to any such listed
9 chemical.

10 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
11 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be
12 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code
13 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the
14 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §
15 25249.7.

16 6. Plaintiff alleges that Defendant distributes and/or offers for sale in California,
17 without a requisite exposure warning, (a) *Mehron® Fantasy FX™* cream makeups, UPC #
18 764294501437 (DEA), (b) *Pavilion® Hello 40* mugs, UPC # 664843753037 (lead), (c) *Cypress*
19 *Home™* crackle ceramic coasters, UPC # 808412509605 (lead), and (d) *Burton & Burton®*
20 graduation mugs, UPC # 098111416551 (lead) (collectively, the “Products” and each a “Product”)
21 that expose persons to lead and/or DEA when used for their intended purpose.

22
23
24 ¹ On June 22, 2012, the State of California listed DEA as a chemical known to the State to cause
25 cancer and it has come under the purview of Proposition 65 regulations since that time. Cal. Code
26 Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

27 ² On October 1, 1992, the state of California listed lead as a chemical known to cause cancer and
28 it has come under the purview of Proposition 65 regulations since that time. Cal. Code Regs. Tit.
27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On February 27, 1987, the State
of California listed lead as a chemical known to cause birth defects or other reproductive harm.

1 19. Pursuant to H&S Code § 25603.1, the warning may be provided by using one or
2 more of the following methods individually or in combination:³

3 a. A warning that appears on a product’s label or other labeling.

4 b. Identification of the product at the retail outlet in a manner which provides
5 a warning. Identification may be through shelf labeling, signs, menus, or a combination
6 thereof.

7 c. The warnings provided pursuant to subparagraphs (a) and (b) shall be
8 prominently placed upon a product’s labels or other labeling or displayed at the retail outlet
9 with such conspicuousness, as compared with other words, statements, designs, or devices
10 in the label, labeling or display as to render it likely to be read and understood by an
11 ordinary individual under customary conditions of purchase or use.

12 d. A system of signs, public advertising identifying the system and toll-free
13 information services, or any other system that provides clear and reasonable warnings.

14 20. Proposition 65 provides that any “person who violates or threatens to violate” the
15 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase
16 “threaten to violate” is defined to mean creating “a condition in which there is a substantial
17 probability that a violation will occur.” (H&S Code § 25249.11(e).) Violators are liable for civil
18 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to
19 365 days (up to a maximum civil penalty amount per violation of \$912,000.00).

20 **FACTUAL BACKGROUND**

21 21. On October 1, 1992, the state of California listed lead as a chemical known to cause
22 cancer and it has come under the purview of Proposition 65 regulations since that time. Cal. Code
23 Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On February 27,
24 1987, the State of California listed lead as a chemical known to cause birth defects or other
25

26 _____
27 ³ Alternatively, a person in the course of doing business may elect to comply with the warning
28 requirements set out in the amended version of 27 CCR 25601, *et.seq.* as amended on August 30,
2016, and operative on August 30, 2018.

1 reproductive harm. In summary, lead was listed under Proposition 65 as a chemical known to the
2 State to cause cancer and birth defects or other reproductive harm.

3 22. On June 22, 2012, the State of California listed DEA as a chemical known to the
4 State to cause cancer and it has come under the purview of Proposition 65 regulations since that
5 time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

6 23. The exposures that are the subject of the Notices result from the purchase,
7 acquisition, handling, and recommended use of the Products. The primary route of exposure to
8 lead and/or DEA is through dermal absorption directly through the skin when consumers use,
9 touch, or handle the Products. Exposure through ingestion will occur by touching the Products
10 with subsequent touching of the user's hand to mouth. No clear and reasonable warning is provided
11 with the Products regarding the health hazards of exposure.

12 24. Defendant has processed, marketed, distributed, offered to sell and/or sold the
13 Products in California since at least April 25, 2023 with respect to the *Mehron® Fantasy FX™*
14 Product; since at least June 19, 2023 with respect to *Pavilion®* Product and the *Cypress Home™*
15 Product; and since at least June 22, 2023 with respect to the *Burton & Burton®* Product. The
16 Products continue to be distributed and sold in California without the requisite warning
17 information.

18 25. At all times relevant to this action, Defendant has knowingly and intentionally
19 exposed users and/or consumers of the Products to lead and/or DEA without first giving a clear
20 and reasonable exposure warning to such individuals.

21 26. As a proximate result of acts by Defendant, as a person in the course of doing
22 business within the meaning of H&S Code § 25249.11, individuals throughout the State of
23 California, including in San Francisco County, have been exposed to lead and/or DEA without a
24 clear and reasonable warning on the Products. The individuals subject to the violative exposures
25 include normal and foreseeable users and consumers that use the Products, as well as all others
26 exposed to the Products.

1 SATISFACTION OF NOTICE REQUIREMENTS

2 27. Plaintiff purchased the Products from Alin. At the time of purchase, Defendant did
3 not provide a Proposition 65 exposure warning for lead, DEA, or any other Proposition 65 listed
4 chemical in a manner consistent with H&S Code § 25603.1 as described *supra*.

5 28. The *Mehron® Fantasy FX™* Product was sent to a testing laboratory for
6 diethanolamine testing to determine the DEA content of the Product; and the *Pavilion®* Product,
7 the *Cypress Home™* Product, and the *Burton & Burton®* Product were sent to a testing laboratory
8 to determine if, and what amount of, lead would migrate and/or leach from the Products.

9 29. For each Product that was sent to the laboratory, Plaintiff received a chemical test
10 report (collectively, the “Chemical Test Reports” and each a “Chemical Test Report”). The
11 Chemical Test Reports findings determined the *Mehron® Fantasy FX™* Product exposes users to
12 DEA; and the *Pavilion®* Product, the *Cypress Home™* Product, and the *Burton & Burton®*
13 Products expose users to lead.

14 30. Plaintiff provided each Chemical Test Report and each Product to an analytical
15 chemist to determine if, based on the findings of the Chemical Test Reports and the reasonable
16 and foreseeable use of the Products, exposure to lead and/or DEA will occur at levels that require
17 Proposition 65 warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of
18 the California Code of Regulations.

19 31. On April 25, 2023, Plaintiff received from the analytical chemist exposure
20 assessment report for the *Mehron® Fantasy FX™* Product that concluded that persons in
21 California who use the *Mehron® Fantasy FX™* Product will be exposed to levels of DEA that
22 require a Proposition 65 exposure warning. On June 19, 2023, Plaintiff received from the analytical
23 chemist exposure assessment reports for the *Pavilion®* Product and the *Cypress Home™* Product
24 that concluded that persons in California who use the *Pavilion®* Product and the *Cypress Home™*
25 Product will be exposed to levels of lead that require a Proposition 65 exposure warning. On June
26 22, 2023, Plaintiff received from the analytical chemist an exposure assessment report for the
27 *Burton & Burton®* Product that concluded that persons in California who use the *Burton &*
28 *Burton®* Product will be exposed to levels of lead that require a Proposition 65 exposure warning.

1 39. The Products do not comply with the Proposition 65 warning requirements.

2 40. Plaintiff, based on her best information and belief, avers that at all relevant times
3 herein, and since at least April 25, 2023 with respect to the *Mehron® Fantasy FX™* Product; since
4 at least June 19, 2023 with respect to *Pavilion®* Product and the *Cypress Home™* Product; and
5 since at least June 22, 2023 with respect to the *Burton & Burton®* Product, continuing until the
6 present, that Defendant has continued to knowingly and intentionally expose California users and
7 consumers of the Products to lead and/or DEA without providing required warnings under
8 Proposition 65.

9 41. The exposures that are the subject of the Notices result from the purchase,
10 acquisition, handling and recommended use of the Products. The primary route of exposure to lead
11 and/or DEA is through dermal absorption directly through the skin when consumers use, touch, or
12 handle the Products. Exposure through ingestion will occur by touching the Products with
13 subsequent touching of the user’s hand to mouth. No clear and reasonable warning is provided
14 with the Products regarding the health hazards of exposure.

15 42. Plaintiff, based on her best information and belief, avers that such exposures will
16 continue every day until clear and reasonable warnings are provided to purchasers and users or
17 until these known toxic chemicals are removed from the Products.

18 43. Defendant has knowledge that the normal and reasonably foreseeable use of the
19 Products expose individuals to lead and/or DEA and Defendant intends that exposures to lead
20 and/or DEA will occur by its deliberate, non-accidental participation in the importation,
21 distribution, sale and offering of the Products to consumers in California.

22 44. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
23 Complaint.

24 45. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above
25 described acts, Defendant is liable for a maximum civil penalty of \$2,500 per day per violation.

26 46. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
27 authorized to grant injunctive relief in favor of Plaintiff and against Defendant.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff demands judgment against Defendant and requests the following
3 relief:

4 A. That the court assess civil penalties against Defendant in the amount of \$2,500 per
5 day for each violation for up to 365 days (up to a maximum civil penalty amount per
6 violation of \$912,000.00) in accordance with Health and Safety Code § 25249.7(b);

7 B. That the court preliminarily and permanently enjoin Defendant mandating
8 Proposition 65 compliant warnings on the Products;

9 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit, in the
10 amount of \$50,000.00.

11 D. That the court grant any further relief as may be just and proper.

12 Dated: February 28, 2024

BRODSKY SMITH

13 By:  _____

14 Evan J. Smith (SBN242352)

15 Ryan P. Cardona (SBN302113)

9595 Wilshire Boulevard, Suite 900

Beverly Hills, CA 90212

16 Telephone: (877) 534-2590

17 Facsimile: (310) 247-0160

18 *Attorneys for Plaintiff*

EXHIBIT "A"

LAW OFFICES
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856.795.7250

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MINEOLA, NY 11501
516.741.4977

PENNSYLVANIA OFFICE
TWO BALA PLAZA, STE. 805
BALA CYNWYD, PA 19004
610.667.6200

April 25, 2023

President/CEO Mehron, Inc. 100 Red Schoolhouse Road, Chestnut Ridge, NY 10977	President/CEO Mehron Inc. 100 Red Schoolhouse Road, Chestnut Ridge, NY 10977
President/CEO Lechler Laboratories, Inc. 60 Baldwin Road, Suite 203 Parsippany, NJ 07054	Member/Manager B.B. CITC, LLC c/o Registered Agents Inc. 100 N. Howard St., Ste. R Spokane, WA 99201
Member/Manager B.B. CITC, LLC 4640 Campus Pl., Ste. 100 Mukilteo, WA 98275	President/CEO Alin Party Supply Co. c/o Elizabeth R Jerez 4139 Woodruff Ave., Lakewood, CA 90713
President/CEO Alin Party Supply Co. 6401 Regio Ave., Buena Park, CA 90620	President/CEO Alin Party Supply Co. dba Alin Party Supply – Riverside 6493 Magnolia Ave., Riverside, CA 92506

60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act¹

To Whom It May Concern:

This Notice of Violation (the "Notice") is provided to you pursuant to and in compliance with California Health & Safety Code § 25249.7(d).

Brodsky & Smith ("Brodsky Smith") represents Precila Balabbo ("Balabbo"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals from use of consumer products sold in California and to improve human health and the environment by reducing hazardous substances.

With respect to the Product herein, Balabbo has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") codified at Cal. Health & Safety Code § 25249.5, et seq. This violation has occurred and continues to occur because the alleged Violator(s) failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in California. Health & Safety Code § 25249.6 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 without first providing a clear and reasonable warning to such individual ..." Without proper

¹ The public enforcement agencies that have been served with copies of this Notice are identified in the attached distribution list accompanying the Certificate of Service.

warnings regarding the toxic effects of exposures to the Listed Chemical resulting from use of the Product, California citizens lack the information necessary to make informed decisions on whether and/or how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

I. DESCRIPTION OF THE VIOLATION

1. **Enforcer:** Precila Balabbo, 285 W. 6th Street, Unit 209, San Pedro, CA 90731; (Ph) 818-434-4023.
2. **Alleged Violator(s):** Mehron, Inc.; Mehron Inc.; Lechler Laboratories, Inc.; B.B. CITC, LLC; Alin Party Supply Co.; Alin Party Supply Co. dba Alin Party Supply - Riverside
3. **Time Period of Exposure:** Violations have been occurring since at least April 25, 2023 and are continuing to this day.
4. **Listed Chemical:** Diethanolamine (DEA) is listed under Proposition 65 as a chemical known to the State to cause cancer.
5. **Product:**

Product²	Non- Exclusive Examples of the Product
Cream Makeup	Mehron Fantasy FX Cream Makeup UPC # 7 64294 50143 7

6. **Description of Exposure:** The exposures that are the subject of this Notice result from the purchase, acquisition, handling and recommended use of the Product. The primary route of exposure to the Listed Chemical is through dermal exposure. Some amount of exposure through ingestion can occur by touching the Product with subsequent touching of the user's hand to mouth. No clear and reasonable warning is provided with the Products regarding the health hazards of exposure to the Listed Chemical.

II. PROPOSITION 65 INFORMATION

For the Violators' reference, enclosed is a copy of "Proposition 65: A Summary" that has been prepared by the Office of Environmental Health Hazard Assessment ("OEHHA"). For more information concerning the provisions of Proposition 65, contact OEHHA at 916.445.6900.

III. RESOLUTION OF THE CLAIMS

Based on the allegations set forth in this Notice, Brodsky Smith intends to file a citizen enforcement lawsuit on behalf of Balabbo against the alleged Violator(s) unless such Violator(s) agree in a binding written agreement to: (1) recall Products already sold; (2) provide Proposition 65 compliant exposure warnings for Products sold in the future or reformulate the Products to eliminate exposures to the Listed Chemical; and (3) pay an appropriate civil penalty based on the factors enumerated in Health &

² The specifically identified example of the Product in this Notice is to assist the recipients' investigation of, among other things, the magnitude of potential exposures to the Listed Chemical from other items within the definition of Products. This example is not intended to be an exhaustive or comprehensive identification of each specific offending Product. It is Balabbo's position that the alleged Violators are obligated to conduct a good faith investigation into other Products that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violators' custody or control) during the relevant period to ensure that requisite health hazard warnings were and are provided to California citizens prior to purchase and use.

Safety Code § 25249.7(b). Consistent with the public interest goals of Proposition 65 and the desire to have these violations of California law quickly rectified, Balabbo is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

Balabbo has retained me as legal counsel in connection with this Notice. **Please direct all communications regarding this Notice to my attention at Brodsky & Smith, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212, (877) 534-2590, esmith@brodskysmith.com.**

Sincerely,

A handwritten signature in black ink, appearing to be 'EJ Smith', written over a horizontal line.

Evan J. Smith

Attachments

Certificate of Merit

Certificate of Service

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary

EXHIBIT “B”

LAW OFFICES
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www.brodskysmith.com

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856.795.7250

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MINEOLA, NY 11501
516.741.4977

PENNSYLVANIA OFFICE
TWO BALA PLAZA, STE. 805
BALA CYNWYD, PA 19004
610.667.6200

June 19, 2023

President/CEO K-2 Industries, Inc. 8210 Buffalo Rd., Bergen, NY 14416	President/CEO K-2 Industries, Inc. dba Pavilion Gift Company 8210 Buffalo Rd., Bergen, NY 14416
President/CEO Alin Party Supply Co. c/o Elizabeth R. Jerez 4139 Woodruff Ave., Lakewood, CA 90713	President/CEO Alin Party Supply Co. 6401 Regio Ave., Buena Park, CA 90620
President/CEO Alin Party Supply Co. dba Alin Party Supply – Lakewood 4139 Woodruff Ave., Lakewood, CA 90713	

60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act¹

To Whom It May Concern:

This Notice of Violation (the "Notice") is provided to you pursuant to and in compliance with California Health & Safety Code § 25249.7(d).

Brodsky Smith represents Precila Balabbo ("Balabbo"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals from use of consumer products sold in California and to improve human health and the environment by reducing hazardous substances.

With respect to the Product herein, Balabbo has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") codified at Cal. Health & Safety Code § 25249.5, et seq. This violation has occurred and continues to occur because the alleged Violator(s) failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in California. Health & Safety Code § 25249.6 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 ..." Without proper warnings regarding the toxic effects of exposures to the Listed Chemical resulting from use of the Product, California citizens lack the information necessary to make informed decisions on whether and/or how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

¹ The public enforcement agencies that have been served with copies of this Notice are identified in the attached distribution list accompanying the Certificate of Service.

I. DESCRIPTION OF THE VIOLATION

1. **Enforcer:** Precila Balabbo, 285 6th Street, Unit 209, San Pedro, CA 90731; (Ph) 818-434-4023.
2. **Alleged Violator(s):** K-2 Industries, Inc.; K-2 Industries, Inc. dba Pavilion Gift Company; Alin Party Supply Co.; Alin Party Supply Co. dba Alin Party Supply - Lakewood
3. **Time Period of Exposure:** Violations have been occurring since at least June 19, 2023 and are continuing to this day.
4. **Listed Chemical:** Lead. Lead is listed under Proposition 65 as a chemical known to the State to cause cancer and reproductive toxicity.
5. **Product:**

Product ²	Non- Exclusive Examples of the Product
Mug	Pavilion Hello 40 Mug UPC # 6 64843 75303 7

6. **Description of Exposure:** The exposures that are the subject of this Notice result from the purchase, acquisition, handling and recommended use of the Product. The primary route of exposure to the Listed Chemical is through dermal absorption directly through the skin when consumers use, touch, or handle the Products. Some amount of exposure through ingestion can occur by touching the Product with subsequent touching of the user's hand to mouth. No clear and reasonable warning is provided with the Products regarding the health hazards of exposure to the Listed Chemical.

II. PROPOSITION 65 INFORMATION

For the Violators' reference, enclosed is a copy of "Proposition 65: A Summary" that has been prepared by the Office of Environmental Health Hazard Assessment ("OEHHA"). For more information concerning the provisions of Proposition 65, contact OEHHA at 916.445.6900.

III. RESOLUTION OF THE CLAIMS

Based on the allegations set forth in this Notice, Brodsky Smith intends to file a citizen enforcement lawsuit on behalf of Balabbo against the alleged Violator(s) unless such Violator(s) agree in a binding written agreement to: (1) recall Products already sold; (2) provide Proposition 65 compliant exposure warnings for Products sold in the future or reformulate the Products to eliminate exposures to the Listed Chemical; and (3) pay an appropriate civil penalty based on the factors enumerated in Health & Safety Code § 25249.7(b). Consistent with the public interest goals of Proposition 65 and the desire to have these violations of California law quickly rectified, Balabbo is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

² The specifically identified example of the Product in this Notice is to assist the recipients' investigation of, among other things, the magnitude of potential exposures to the Listed Chemical from other items within the definition of Products. This example is not intended to be an exhaustive or comprehensive identification of each specific offending Product. It is Balabbo's position that the alleged Violators are obligated to conduct a good faith investigation into other Products that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violators' custody or control) during the relevant period to ensure that requisite health hazard warnings were and are provided to California citizens prior to purchase and use.

Balabbo has retained me as legal counsel in connection with this Notice. Please direct all communications regarding this Notice to my attention at Brodsky Smith, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212, (877) 534-2590, esmith@brodskysmith.com.

Sincerely,

A handwritten signature in black ink, appearing to be 'Evan J. Smith', written over a horizontal line.

Evan J. Smith

Attachments

Certificate of Merit

Certificate of Service

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary

EXHIBIT “C”

LAW OFFICES
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PENNSYLVANIA OFFICE
TWO BALA PLAZA, STE. 805
BALA CYNWYD, PA 19004
610.667.6200

June 19, 2023

President/CEO Evergreen Enterprises, Inc. c/o Corporation Service Company 100 Shockoe Slip, Floor 2 Richmond, VA 23219	President/CEO Evergreen Enterprises, Inc. dba Cypress Home 5915 Midlothian Tpke., Richmond, VA 23225
Member/Manager Evergreen Enterprises of Virginia, LLC c/o Corporation Service Company 100 Shockoe Slip, Floor 2 Richmond, VA 23219	Member/Manager Evergreen Enterprises of Virginia, LLC dba Cypress Home 5915 Midlothian Tpke., Richmond, VA 23225
Member/Manager Evergreen Enterprises of Virginia, LLC c/o Corporation Service Company 251 Little Falls Dr., Wilmington, DE 19808	Member/Manager Evergreen Enterprises Global Group, LLC c/o Corporation Service Company 100 Shockoe Slip, Floor 2 Richmond, VA 23219
President/CEO Evergreen/Cypress Enterprises, Inc. c/o CSC – Lawyers Incorporating Service 2710 Gateway Oaks Dr., Sacramento, CA 95833	President/CEO Alin Party Supply Co. c/o Elizabeth R. Jerez 4139 Woodruff Ave., Lakewood, CA 90713
President/CEO Alin Party Supply Co. dba Alin Party Supply – Lakewood 4139 Woodruff Ave., Lakewood, CA 90713	President/CEO Alin Party Supply Co. 6401 Regio Ave., Buena Park, CA 90620

60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act¹

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With respect to the Product herein, Balabbo has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") codified at Cal. Health & Safety Code § 25249.5, et seq. This violation has occurred and continues to occur because the alleged Violator(s) failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in California. Health & Safety Code § 25249.6 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 ...". Without proper warnings regarding the toxic effects of exposures to the Listed Chemical resulting from use of the Product, California citizens lack the information necessary to make informed decisions on whether and/or how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

I. DESCRIPTION OF THE VIOLATION

1. **Enforcer:** Precila Balabbo, 285 6th Street, Unit 209, San Pedro, CA 90731; (Ph) 818-434-4023.
2. **Alleged Violator(s):** Evergreen Enterprises, Inc.; Evergreen Enterprises, Inc. dba Cypress Home; Evergreen Enterprises of Virginia, LLC; Evergreen Enterprises of Virginia, LLC dba Cypress Home; Evergreen Enterprises Global Group, LLC; Evergreen/Cypress Enterprises, Inc.; Alin Party Supply Co.; Alin Party Supply Co. dba Alin Party Supply - Lakewood
3. **Time Period of Exposure:** Violations have been occurring since at least June 19, 2023 and are continuing to this day.
4. **Listed Chemical:** Lead. Lead is listed under Proposition 65 as a chemical known to the State to cause cancer and reproductive toxicity.
5. **Product:**

Product ²	Non- Exclusive Examples of the Product
Ceramic Coasters	Cypress Home Crackle Ceramic Coasters UPC # 8 08412 50960 5

6. **Description of Exposure:** The exposures that are the subject of this Notice result from the purchase, acquisition, handling and recommended use of the Product. The primary route of exposure to the Listed Chemical is through dermal absorption directly through the skin when consumers use, touch, or handle the Products. Some amount of exposure through ingestion can occur by touching the Product with subsequent touching of the user's hand to mouth. No clear and reasonable warning is provided with the Products regarding the health hazards of exposure to the Listed Chemical.

² The specifically identified example of the Product in this Notice is to assist the recipients' investigation of, among other things, the magnitude of potential exposures to the Listed Chemical from other items within the definition of Products. This example is not intended to be an exhaustive or comprehensive identification of each specific offending Product. It is Balabbo's position that the alleged Violators are obligated to conduct a good faith investigation into other Products that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violators' custody or control) during the relevant period to ensure that requisite health hazard warnings were and are provided to California citizens prior to purchase and use.

II. PROPOSITION 65 INFORMATION

For the Violators' reference, enclosed is a copy of "Proposition 65: A Summary" that has been prepared by the Office of Environmental Health Hazard Assessment ("OEHHA"). For more information concerning the provisions of Proposition 65, contact OEHHA at 916.445.6900.

III. RESOLUTION OF THE CLAIMS

Based on the allegations set forth in this Notice, Brodsky Smith intends to file a citizen enforcement lawsuit on behalf of Balabbo against the alleged Violator(s) unless such Violator(s) agree in a binding written agreement to: (1) recall Products already sold; (2) provide Proposition 65 compliant exposure warnings for Products sold in the future or reformulate the Products to eliminate exposures to the Listed Chemical; and (3) pay an appropriate civil penalty based on the factors enumerated in Health & Safety Code § 25249.7(b). Consistent with the public interest goals of Proposition 65 and the desire to have these violations of California law quickly rectified, Balabbo is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

Balabbo has retained me as legal counsel in connection with this Notice. **Please direct all communications regarding this Notice to my attention at Brodsky Smith, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212, (877) 534-2590, esmith@brodskysmith.com.**

Sincerely,



Evan J. Smith

Attachments

Certificate of Merit

Certificate of Service

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary

EXHIBIT “D”

LAW OFFICES
BRODSKY SMITH

9595 WILSHIRE BLVD., STE. 900
BEVERLY HILLS, CA 90212
877.534.2590
www.brodskysmith.com

NEW JERSEY OFFICE
1310 NORTH KINGS HIGHWAY
CHERRY HILL, NJ 08934
856.795.7250

NEW YORK OFFICE
240 MINEOLA BOULEVARD
MINEOLA, NY 11501
516.741.4977

PENNSYLVANIA OFFICE
TWO BALA PLAZA, STE. 805
BALA CYNWYD, PA 19004
610.667.6200

June 22, 2023

President/CEO Flowers, Inc. c/o Maxine H. Burton 325 Cleveland Road Bogart, GA 30622	President/CEO Burton & Burton, Inc. c/o Elizabeth R. Burton 1096 Burton Road Barney, GA 31625-2710
President/CEO Alin Party Supply Co. c/o Elizabeth R. Jerez 4139 Woodruff Ave. Lakewood, CA 90713	President/CEO Alin Party Supply Co. 6401 Regio Ave. Buena Park, CA 90620

60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act¹

To Whom It May Concern:

This Notice of Violation (the "Notice") is provided to you pursuant to and in compliance with California Health & Safety Code § 25249.7(d).

Brodsky Smith represents Precila Balabbo ("Balabbo"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals from use of consumer products sold in California and to improve human health and the environment by reducing hazardous substances.

With respect to the Product herein, Balabbo has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") codified at Cal. Health & Safety Code § 25249.5, et seq. This violation has occurred and continues to occur because the alleged Violator(s) failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in California. Health & Safety Code § 25249.6 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 ..." Without proper warnings regarding the toxic effects of exposures to the Listed Chemical resulting from use of the Product, California citizens lack the information necessary to make informed decisions on whether and/or how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

¹ The public enforcement agencies that have been served with copies of this Notice are identified in the attached distribution list accompanying the Certificate of Service.

I. DESCRIPTION OF THE VIOLATION

1. **Enforcer:** Precila Balabbo, 285 6th Street, Unit 209, San Pedro, CA 90731; (Ph) 818-434-4023.
2. **Alleged Violator(s):** Flowers, Inc.; Burton & Burton, Inc.; Alin Party Supply Co.
3. **Time Period of Exposure:** Violations have been occurring since at least June 22, 2023 and are continuing to this day.
4. **Listed Chemical:** Lead. Lead is listed under Proposition 65 as a chemical known to the State to cause cancer and birth defects or other reproductive harm.
5. **Product:**

Product²	Non- Exclusive Examples of the Product
Mug	Burton & Burton Graduation Mug UPC# 098111416551

6. **Description of Exposure:** The exposures that are the subject of this Notice result from the purchase, acquisition, handling and recommended use of the Product. The primary route of exposure to the Listed Chemical is through dermal absorption directly through the skin when consumers use, touch, or handle the Products. Some amount of exposure through ingestion can occur by touching the Product with subsequent touching of the user's hand to mouth. No clear and reasonable warning is provided with the Products regarding the health hazards of exposure to the Listed Chemical.

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Balabbo has retained me as legal counsel in connection with this Notice. **Please direct all communications regarding this Notice to my attention at Brodsky Smith, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212, (877) 534-2590, esmith@brodskysmith.com.**

Sincerely,

A handwritten signature in black ink, appearing to be 'EJ Smith', written over a horizontal line.

Evan J. Smith

Attachments

Certificate of Merit

Certificate of Service

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary