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8 *Attorneys for Plaintiff*

ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco

**07/03/2024**  
Clerk of the Court  
BY: MARK UDAN

Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

**CGC-24-616123**

11 GABRIEL ESPINOZA,

12 Plaintiff,

13 vs.

14 CHEWY, INC.,

15 Defendant.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

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

16 Plaintiff Gabriel Espinoza (“Plaintiff”), by and through his attorneys, alleges the following  
17 cause of action in the public interest of the citizens of the State of California.

**BACKGROUND OF THE CASE**

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

24 2. This complaint is a representative action brought by Plaintiff in the public interest  
25 of the citizens of the State of California to enforce the People’s right to be informed of the health  
26 hazards caused by exposure to lead and/or di(2-ethylhexyl) phthalate (“DEHP”), toxic chemicals  
27 found in products sold and/or distributed by defendant Chewy, Inc. (“Chewy” or “Defendant”) in  
28 California.

1           3.       DEHP<sup>1</sup> and lead<sup>2</sup> are harmful chemicals known to the State of California to cause  
2 cancer and birth defects or other reproductive harm.

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

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

15           6.       Plaintiff alleges that Defendant distributes and/or offers for sale in California,  
16 without a requisite exposure warning, (a) Loyalty Pet Products dog grooming shear briefcases,  
17 UPC # 685239950779 (DEHP), (b) Loyalty Pet Products dog grooming hammocks, #  
18 685239950762, (DEHP), (c) *Frisco*® cat face ceramic dishes, UPC # 192268116576, (lead), and  
19 (d) Bitebuster Scratchbuster pet grooming sleeves, UPC # 860002982656, (DEHP) (collectively,  
20 the “Products” and each a “Product”) that expose persons to lead and/or DEHP when used for their  
21 intended purpose.

22 \_\_\_\_\_  
23 <sup>1</sup> . On January 1, 1988, the State of California listed DEHP as a chemical known to the State to  
24 cause cancer and it has come under the purview of Proposition 65 regulations since that time. Cal.  
25 Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On October 24,  
26 2003, the State of California listed DEHP as a chemical known to cause birth defects or other  
27 reproductive harm.

28 <sup>2</sup> On October 1, 1992, the state of California listed lead as a chemical known to cause cancer and  
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 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the enforcement  
2 of violations of Proposition 65 in any Court of competent jurisdiction; therefore, this Court has  
3 jurisdiction over this lawsuit.

4 15. This Court has jurisdiction over Defendant because Defendant is either a citizen of  
5 the State of California, has sufficient minimum contacts with the State of California, is registered  
6 with the California Secretary of State as foreign corporations authorized to do business in the State  
7 of California, and/or has otherwise purposefully availed itself of the California market. Such  
8 purposeful availment has rendered the exercise of jurisdiction by California courts consistent and  
9 permissible with traditional notions of fair play and substantial justice.

10 **STATUTORY BACKGROUND**

11 16. The people of the State of California declared in Proposition 65 their right “[t]o be  
12 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
13 harm.” (Section 1(b) of Initiative Measure, Proposition 65.)

14 17. To effect this goal, Proposition 65 requires that individuals be provided with a  
15 “clear and reasonable warning” before being exposed to substances listed by the State of California  
16 as causing cancer and birth defects or other reproductive harm. H&S Code § 25249.6 states, in  
17 pertinent part:

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

21 18. An exposure to a chemical in a consumer product is one “which results from a  
22 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a  
23 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §  
24 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...  
25 shall provide a warning to any person to whom the product is sold or transferred unless the product  
26 is packaged or labeled with a clear and reasonable warning.”  
27  
28



1 On October 24, 2003, the State of California listed DEHP as a chemical known to cause birth  
2 defects or other reproductive harm.

3 22. On October 1, 1992, the state of California listed lead as a chemical known to cause  
4 cancer and it has come under the purview of Proposition 65 regulations since that time. Cal. Code  
5 Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On February 27,  
6 1987, the State of California listed lead as a chemical known to cause birth defects or other  
7 reproductive harm.

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

14 24. Defendant has processed, marketed, distributed, offered to sell and/or sold the  
15 Products in California since at least February 22, 2024 with respect to the Loyalty Pet Products  
16 dog grooming shear briefcases and the Loyalty Pet Products dog grooming hammocks; since at  
17 least March 13, 2024 with respect to the *Frisco*® cat face ceramic dishes; and since at least March  
18 20, 2024 with respect to the Bitebuster Scratchbuster pet grooming sleeves. The Products continue  
19 to be distributed and sold in California without the requisite warning information.

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

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

1 SATISFACTION OF NOTICE REQUIREMENTS

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

5 28. The Loyalty Pet Products dog grooming shear briefcases, the Loyalty Pet Products  
6 dog grooming hammocks and the Bitebuster Scratchbuster pet grooming sleeves were sent to a  
7 testing laboratory for phthalate testing to determine the phthalate content of the Product; and the  
8 *Frisco*® cat face ceramic dishes were sent to a testing laboratory to determine if, and what amount  
9 of, lead would migrate and/or leach from the Products.

10 29. For each Product that was sent to the laboratory, Plaintiff received a chemical test  
11 report (collectively, the “Chemical Test Reports” and each a “Chemical Test Report”). The  
12 Chemical Test Reports findings determined the *Frisco*® cat face ceramic dishes expose users to  
13 lead; and the Loyalty Pet Products dog grooming shear briefcases, the Loyalty Pet Products dog  
14 grooming hammocks and the Bitebuster Scratchbuster pet grooming sleeves expose users to  
15 DEHP.

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

21 31. On February 22, 2024, Plaintiff received from the analytical chemist an exposure  
22 assessment report for the Loyalty Pet Products dog grooming shear briefcases and the Loyalty Pet  
23 Products dog grooming hammocks that concluded that persons in California who use the Loyalty  
24 Pet Products dog grooming shear briefcases and the Loyalty Pet Products dog grooming hammocks  
25 will be exposed to levels of DEHP that require a Proposition 65 exposure warning. On March 13,  
26 2024, Plaintiff received from the analytical chemist an exposure assessment report for the *Frisco*®  
27 cat face ceramic dishes that concluded that persons in California who use the *Frisco*® cat face  
28 ceramic dishes will be exposed to levels of lead that require a Proposition 65 exposure warning.

1 On March 20, 2024, Plaintiff received from the analytical chemist an exposure assessment report  
2 for the Bitebuster Scratchbuster pet grooming sleeves that concluded that persons in California  
3 who use the Bitebuster Scratchbuster pet grooming sleeves will be exposed to levels of DEHP that  
4 require a Proposition 65 exposure warning.

5 32. On February 22, 2024 (Loyalty Pet Products dog grooming shear briefcases and  
6 Loyalty Pet Products dog grooming hammocks), March 13, 2024 (*Frisco*® cat face ceramic  
7 dishes), and March 20, 2024 (Bitebuster Scratchbuster pet grooming sleeves), Plaintiff gave notice  
8 of alleged violation of Health and Safety Code § 25249.6 (collectively, the “Notices” and each a  
9 “Notice”) to Defendant concerning the exposure of California citizens to lead and/or DEHP  
10 contained in the Products without proper warning, subject to a private action to Defendant and to  
11 the California Attorney General’s office and the offices of the County District attorneys and City  
12 Attorneys for each city with a population greater than 750,000 persons wherein the herein  
13 violations allegedly occurred. See attached at Exhibits “A” – “D” a true and correct copy of the  
14 Notices.

15 33. The Notices complied with all procedural requirements of Proposition 65 including  
16 the attachment of a Certificate of Merit affirming that Plaintiff’s counsel had consulted with at  
17 least one person with relevant and appropriate expertise who reviewed relevant data regarding lead  
18 and/or DEHP exposure, and that counsel believed there was meritorious and reasonable cause for  
19 a private action.

20 34. After receiving the Notices, and to Plaintiff’s best information and belief, none of  
21 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a  
22 cause of action against Defendant under Proposition 65 to enforce the alleged violations which are  
23 the subject of the Notices.

24 35. Plaintiff is commencing this action more than sixty (60) days from the date of each  
25 Notice to Defendant, as required by law.



1 **FIRST CAUSE OF ACTION**

2 **(By Plaintiff against Defendant for the Violation of Proposition 65)**

3 36. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 35 of  
4 this Complaint as though fully set forth herein.

5 37. Defendant has, at all times mentioned herein, acted as distributor, and/or retailer of  
6 the Products.

7 38. Use of the Products will expose users to lead and/or DEHP, hazardous chemicals  
8 found on the Proposition 65 list of chemicals known to be hazardous to human health.

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

10 40. Plaintiff, based on his best information and belief, avers that at all relevant times  
11 herein, and since at least February 22, 2024 with respect to the Loyalty Pet Products dog grooming  
12 shear briefcases and the Loyalty Pet Products dog grooming hammocks; since at least March 13,  
13 2024 with respect to the *Frisco*® cat face ceramic dishes; and since at least March 20, 2024 with  
14 respect to the Bitebuster Scratchbuster pet grooming sleeves, continuing until the present, that  
15 Defendant has continued to knowingly and intentionally expose California users and consumers  
16 of the Products to lead and/or DEHP without providing required warnings under Proposition 65.

17 41. The exposures that are the subject of the Notices result from the purchase,  
18 acquisition, handling, consumption, and recommended use of the Products. The primary route of  
19 exposure to lead and/or DEHP is through dermal absorption directly through the skin when  
20 consumers use, touch, or handle the Products. Exposure through ingestion will occur by touching  
21 the Products with subsequent touching of the user's hand to mouth. No clear and reasonable  
22 warning is provided with the Products regarding the health hazards of exposure.

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

26 43. Defendant has knowledge that the normal and reasonably foreseeable use of the  
27 Products expose individuals to lead and/or DEHP, and Defendant intends that exposures to lead  
28

1 and/or DEHP will occur by its deliberate, non-accidental participation in the importation,  
2 distribution, sale and offering of the Products to consumers in California.

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

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

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

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff demands judgment against Defendant and requests the following  
11 relief:

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

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

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

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

20 Dated: July 3, 2024

BRODSKY SMITH

21 By: 

22 Evan J. Smith (SBN242352)

23 Ryan P. Cardona (SBN302113)

9595 Wilshire Boulevard, Suite 900

Beverly Hills, CA 90212

24 Telephone: (877) 534-2590

25 Facsimile: (310) 247-0160

26 *Attorneys for Plaintiff*

# EXHIBIT "A"

LAW OFFICES  
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**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

February 22, 2024

President/CEO Ry Enterprises Inc. c/o Ryan V. Alvarez 40991 Horseshoe Road Punta Gorda, FL 33982	President/CEO Loyalty Pet Products Intl, Inc. c/o Ryan V. Alvarez 40991 Horseshoe Road Punta Gorda, FL 33982
President/CEO Chewy, Inc. c/o Corporate Creations Network Inc. 1521 Concord Pike, Suite 201 Wilmington, DE 19803	President/CEO Chewy, Inc. c/o Corporate Creations Network Inc. 7801 Folsom Blvd., #202 Sacramento, CA 95826
President/CEO Chewy, Inc. c/o Corporate Creations Network, Inc. 801 US Highway 1 North Palm Beach, FL 33408	

**60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act<sup>1</sup>**

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 Gabriel Espinoza ("Espinoza"), 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, Espinoza 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.

<sup>1</sup> 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:** Gabriel Espinoza, 3924 Carlin Ave., Lynwood, CA 90262-5204; (Ph) 424-285-4896.
2. **Alleged Violator(s):** Ry Enterprises Inc.; Loyalty Pet Products Intl, Inc.; Chewy, Inc.
3. **Time Period of Exposure:** Violations have been occurring since at least February 22, 2024 and are continuing to this day.
4. **Listed Chemical:** Di(2-ethylhexyl) phthalate (DEHP). DEHP is listed under Proposition 65 as a chemical known to the State to cause cancer and birth defect or other reproductive harm.
5. **Product:**

<b>Product<sup>2</sup></b>	<b>Non- Exclusive Examples of the Product</b>
Dog Grooming Briefcase	Loyalty Pet Products Dog Grooming Shear Briefcase UPC# 685239950779

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 Espinoza 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, Espinoza is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

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<sup>2</sup> 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 Espinoza’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.

Espinoza 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  
**BRODSKY SMITH**

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BEVERLY HILLS, CA 90212  
877.534.2590  
www.brodskysmith.com

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**PENNSYLVANIA OFFICE**  
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February 22, 2024

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5. **Product:**

<b>Product<sup>2</sup></b>	<b>Non- Exclusive Examples of the Product</b>
Dog Grooming Hammock	Loyalty Pet Products Dog Grooming Hammock 685239950762

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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Espinoza 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](mailto: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 “C”

LAW OFFICES  
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516.741.4977

**PENNSYLVANIA OFFICE**  
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BALA CYNWYD, PA 19004  
610.667.6200

March 13, 2024

President/CEO Chewy, Inc. c/o Corporate Creations Network Inc. 1521 Concord Pike, Suite 201 Wilmington, DE 19803	President/CEO Chewy, Inc. c/o Corporate Creations Network Inc. 7801 Folsom Blvd., #202 Sacramento, CA 95826
President/CEO Chewy, Inc. c/o Corporate Creations Network, Inc. 801 US Highway 1 North Palm Beach, FL 33408	

**60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act<sup>1</sup>**

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 Gabriel Espinoza ("Espinoza"), 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, Espinoza 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.

<sup>1</sup> 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:** Gabriel Espinoza, 3924 Carlin Ave., Lynwood, CA 90262-5204; (Ph) 310.863.2852.
- 2. **Alleged Violator(s):** Chewy, Inc.
- 3. **Time Period of Exposure:** Violations have been occurring since at least March 13, 2024 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:**

Product <sup>2</sup>	Non- Exclusive Examples of the Product
Ceramic Dish	Frisco Cat Face Ceramic Dish UPC# 1 92268 11657 6

- 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 Espinoza 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, Espinoza is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

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<sup>2</sup> 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 Espinoza’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.

Espinoza 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](mailto:esmith@brodskysmith.com).

Sincerely,



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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

March 20, 2024

Member/Manager Bitebuster, LLC c/o Patricia K Kolk 304 S. Ironwood Street Gilbert, AZ 85296	Member/Manager Bitebuster, LLC 323 N. Palm Street Gilbert, AZ 85234
President/CEO Chewy, Inc. c/o Corporate Creations Network Inc. 1521 Concord Pike, Suite 201 Wilmington, DE 19803	President/CEO Chewy, Inc. c/o Corporate Creations Network Inc. 7801 Folsom Blvd., #202 Sacramento, CA 95826
President/CEO Chewy, Inc. c/o Corporate Creations Network, Inc. 801 US Highway 1 North Palm Beach, FL 33408	

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<sup>1</sup> 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:** Gabriel Espinoza, 3924 Carlin Ave., Lynwood, CA 90262-5204; (Ph) 424-285-4896.
2. **Alleged Violator(s):** Bitebuster, LLC; Chewy, Inc.
3. **Time Period of Exposure:** Violations have been occurring since at least March 20, 2024 and are continuing to this day.
4. **Listed Chemical:** Di(2-ethylhexyl) phthalate (DEHP). DEHP is listed under Proposition 65 as a chemical known to the State to cause cancer and birth defect or other reproductive harm.
5. **Product:**

<b>Product<sup>2</sup></b>	<b>Non- Exclusive Examples of the Product</b>
Grooming Sleeve	Bitebuster Scratchbuster Pet Grooming Sleeve UPC# 8 60002 98265 6

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**

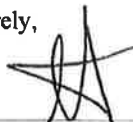
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Espinoza has retained me as legal counsel in connection with this Notice. **Please direct all communications regarding this Notice to my attention at Brodsky Smith, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212, (877) 534-2590, esmith@brodskysmith.com.**

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