

Law Office of
BRIAN GAFFNEY

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May 10, 2004

By Certified Mail, Return Receipt Requested to Violators
By First Class U.S. Mail to Public Enforcement Agencies

Dear Public Enforcement Agencies / Violators:

This office and the Ecological Rights Foundation (ERF) gives you notice that, since at least May 10, 2000¹, the businesses listed on Attachment A have been, and continue to be in violation of California Health & Safety Code §25249.6. Both this office and the ERF are private enforcers of Proposition 65, both may be contacted at the above listed address and telephone number, and I am a responsible individual with both ERF and this office. The above referenced violations occur when California residents handle and/or use curios which contain leaded glass inserts, leaded mullions, leaded coming or lead solder (collectively "leaded curios"). Examples of particular products manufactured, sold, distributed and/or marketed by the violators are attached as Attachment B. These leaded curios contain lead and lead compounds ("lead"). When people touch or otherwise handle these leaded curios, (i.e., when they install, clean, fix or replace these leaded curios; when they remove these leaded curios from their packaging; or whenever they run their hands and/or fingers over the leaded glass mullions or lead solder), lead that is in and on the leaded curios comes off on their hands. This lead is then ingested and /or inhaled through hand-to-mouth, hand-to-food-to-mouth, and hand-to-cigarette-to-mouth-to-lungs behavior. This lead is also absorbed through the skin, enters the body via cuts and abrasions, and through mucous membranes when people with lead on their hands touch these mucous membranes. leaded curios sold by these businesses thus expose consumers and workers to lead via the dermal, ingestion, inhalation and subcutaneous routes. In addition, exposures in the environmental context occur in the homes, businesses, distribution outlets, retail outlets and public buildings where the leaded curios are located. The environmental exposure for which a warning is required occurs beyond the property owned or controlled by the violators. Exposures to lead occur within the consumer, environmental, and occupational contexts. ERF, does not, however, allege occupational exposures as to leaded curios manufactured outside of California, except as to the workplaces that these businesses maintain in California. These businesses do not provide clear and reasonable warnings to people who handle, touch, install, clean, repair, replace or use leaded curios, that the leaded curios will expose them to chemicals known to cause cancer and birth defects. These violations and threatened violations will continue to occur everyday until these businesses either provides clear and reasonable warnings, reformulates its curios so as not to contain lead, or stop selling leaded curios. These violations occur in all of California's 58 counties and both on and off of these businesses' properties.

Enclosure to Violators "The Safe Drinking Water and Toxic Enforcement Act of 1986: A Summary"

¹ On February 27, 1987 lead was listed under the statute as a chemical known to the state of California to cause reproductive toxicity. On October 1, 1992 lead and lead compounds were listed under the statute as chemicals known to the State of California to cause cancer.

Attachment A

Bernhardt Furniture Company
G. Alex Bernhardt
President / CEO
Post B. 740
Lenoir, North Carolina 28645

Attachment B

Proposition 65 Violator

Products manufactured, sold, distributed and/or marketed

Bernhardt Furniture Company G. Alex Bernhardt President / CEO Post B. 740 Lenoir, North Carolina 28645	Curios with leaded glass doors
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CERTIFICATE OF SERVICE

I, Brian Gaffney, declare:

If so called, I could and would testify as follows: I am over eighteen. My business address is 370 Grand Avenue, Suite 5, Oakland, CA 94610. On May 10, 2004, I caused the attached 60-DAY NOTICE LETTER, to be served by U.S. Mail on those public enforcement agencies listed on the attached SERVICE LIST; in addition on the same date and by Certified Mail I caused the attached 60-DAY NOTICE LETTER and PROPOSITION 65: A SUMMARY to be sent by Certified Mail to the private business entities also listed on the attached SERVICE LIST. I deposited copies of these documents in envelopes, postage pre-paid, with the U.S. Postal Service on the day on which the mail is collected. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on May 10, 2004, at Oakland, California.

This notice alleges the violation of Proposition 65 with respect to occupational exposures governed by the California State Plan for Occupational Safety and Health. The State Plan incorporated the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997. This approval specifically placed certain conditions on Proposition 65, including that it does not apply to the conduct of manufacturers occurring outside the State of California. The approval also provides that an employer may use the means of compliances in the general hazard communication requirements to comply with Proposition 65. It also requires that supplemental enforcement is subject to the supervision of the California Occupational Safety and Health Administration. Accordingly, any settlement, civil complaint, or substantive court orders in this matter must be submitted to the Attorney General.

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Brian Gaffney, hereby declare: 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. I am the attorney for the noticing party. 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. 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 plaintiffs' 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. 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.

May 10, 2004

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