



As You Sow

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A Foundation Planting Seeds for Social Change

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A NON-PROFIT CORPORATION
311 California Street, Suite 510
San Francisco, California 94104
www.asyousow.org

May 20, 2004

**NOTICE OF VIOLATION OF
CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.**

Dear Public Enforcement Agencies:

As You Sow ("AYS") is a non-profit foundation organized under California's Non-Profit Public Benefit Corporation Law. AYS is dedicated to, among other causes, the protection of the environment, the promotion of human health, the improvement of worker and consumer safety, and environmental education.

AYS has documented violations of California's Safe Drinking Water & Toxic Enforcement Act of 1986 ("Proposition 65"), codified at Health & Safety Code §25249.5 *et seq.* This letter serves to provide AYS' notification of these violations to the public enforcement agencies and to the violator. Pursuant to §25249.7(d) of the statute, AYS intends to bring an enforcement action sixty (60) days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

A summary of the statute and its implementing regulations, which was prepared by the lead agency designated under the statute, is enclosed with the copy of this notice served upon the violator. The specific details of the violations that are the subject of this notice are provided below.

Alleged violator. The name of the violator covered by this notice is **EXPRESS, LLC** ("Express").

Chemicals. These violations involve exposures to lead and lead compounds from the products described below. On February 27, 1987, the State of California

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officially listed lead as a chemical known to cause reproductive toxicity (Title 22 California Code of Regulations § 12000, *et seq.*). On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer (Title 22 California Code of Regulations § 12000, *et seq.*)

Consumer products. The products that are the subject of this notice are jewelry manufactured, distributed or sold by Express including, but not limited to, the products identified in Exhibit A attached hereto.

Route of exposure. The consumer exposures that are the subject of this notice result from the handling and/or wearing of these products. Accordingly, the consumer exposures have occurred and continue to occur through the dermal contact and ingestion.

Duration of violations. Each of these ongoing violations has occurred on every day since May 20, 2000, and will continue every day until clear and reasonable warnings are provided or until these deleterious chemicals are removed from the products. Under Proposition 65, each exposure constitutes a separate violation. Health & Safety Code §25249.7(b). The maximum civil penalty for each such violation is \$2,500. *Id.* These same facts constitute a violation of Business and Professions Code § 17200 *et seq.*

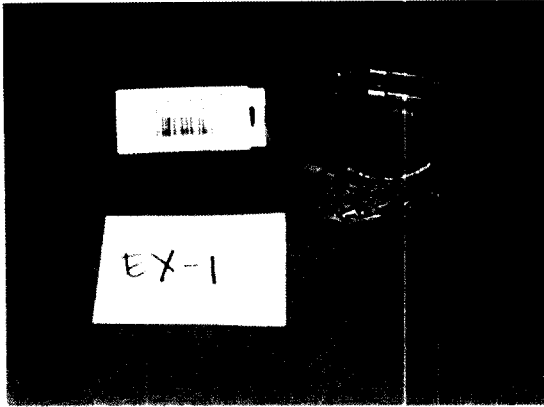
Pursuant to Title 11, C.C.R. § 3100, a Certificate of Merit is attached hereto.

In keeping with its public interest mission and to expeditiously rectify these ongoing violations of California law, AYS is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation. Please direct all communications regarding this notice to AYS' counsel in this matter:

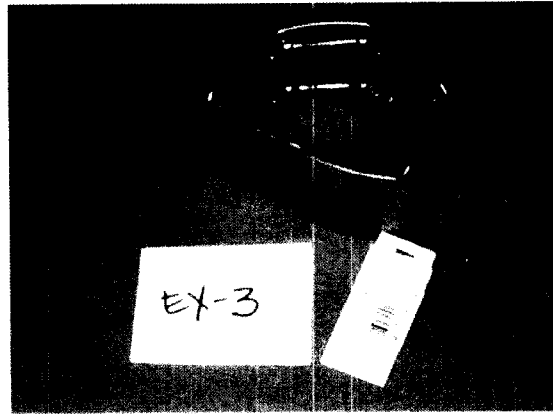
Babak Naficy, Esq.
1204 Nipoma Street
San Luis Obispo, CA 93401
Telephone: (805) 593-0926
Facsimile: (805) 593-0946

Enclosure

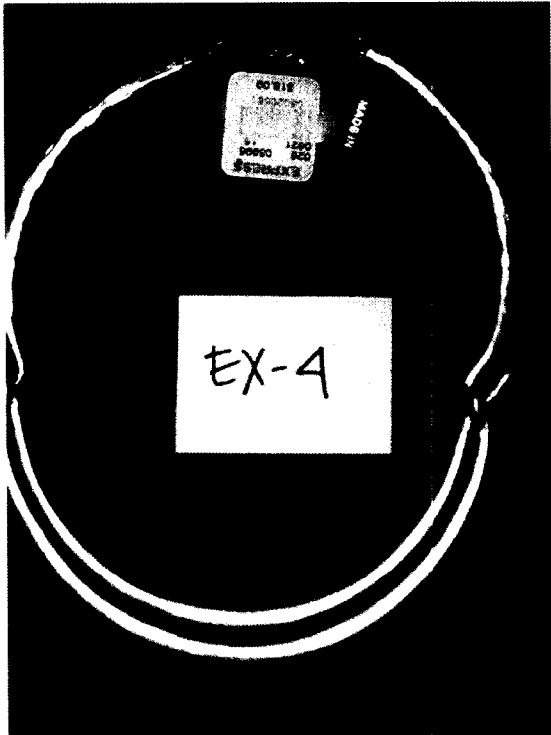
EXHIBIT A (Express, LLC)



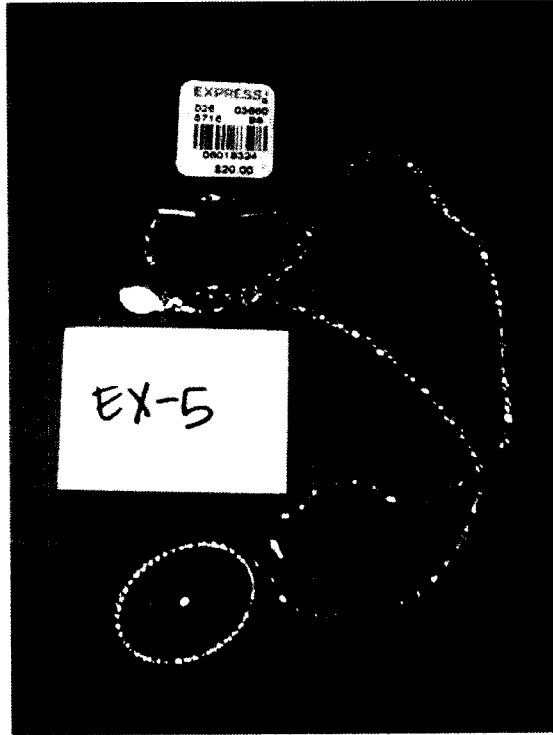
Product ID 08021816



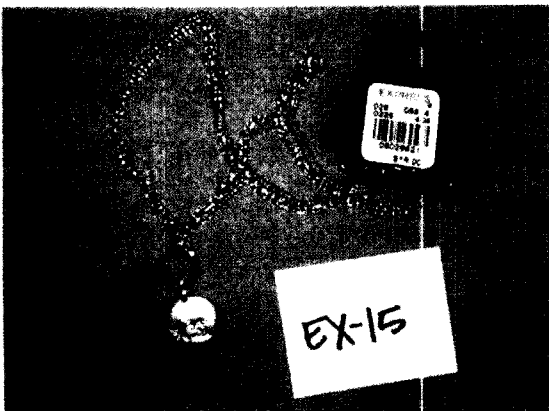
Product ID 08021780



Product ID 08020561



Product ID 08016324



Product ID 08026921

CERTIFICATE OF MERIT

(for As You Sow's Notice of Proposition 65 Violation on EXPRESS, LLC)

I, Lawrence E. Fahn, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that **EXPRESS, LLC** has violated Health & Safety Code §25249.6 by failing to provide clear and reasonable warnings.

2. I am the Executive Director of the noticing party, As You Sow.

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 exposure to the listed chemicals that are 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 plaintiffs' case can be established and that 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 §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.

Dated: 5/19/04

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years, and not a party to the within action; my business address is: 311 California Street, Suite 510, San Francisco, California 94104.

On May 20, 2004, I served the following documents:

- Notice of Violation of California Health & Safety Code § 25249.5 et seq.
- Certificate of Merit
- "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary"

on the following party by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below, and depositing it at a United States Postal Service Office for delivery by Certified Mail:

Ken Stevens, CEO
Express, LLC
1 Limited Parkway
Columbus, OH 43230

On May 20, 2004, I served the following document(s):

- Notice of Violation of California Health & Safety Code § 25249.5 et seq.
- Certificate of Merit, including Supporting Documentation Required by Title 11, C.C.R. § 3102

on the following party by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below, and depositing it at a United States Postal Service Office for delivery by Certified Mail:

Attn: Craig Thompson, Deputy Attorney General
California Department of Justice
P.O. Box 944255
Sacramento, CA 94244-2550

On May 20, 2004, I served the following document(s):

- Notice of Violation of California Health & Safety Code § 25249.5 et seq.
- Certificate of Merit

on each of the parties on the service list attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the service list attached hereto, and depositing it at United States Postal Service mail box for delivery by First Class Mail.

Executed on May 20, 2004, at San Francisco, California.

PUBLIC ENFORCEMENT AGENCIES SERVICE LIST (updated 03/25/04)

THE HONORABLE THOMAS J ORLOFF
ALAMEDA COUNTY DISTRICT ATTORNEY
1225 FALLON ST RM 900
OAKLAND CA 94612

THE HONORABLE ARTHUR MAILLET
INYO COUNTY DISTRICT ATTORNEY
PO DRAWER D
INDEPENDENCE CA 93526

THE HONORABLE DEAN FLIPPO
MONTEREY COUNTY DISTRICT ATTORNEY
PO BOX 1131
SALINAS CA 93902

THE HONORABLE WILLIAM RICHMOND
ALPINE COUNTY DISTRICT ATTORNEY
PO BOX 248
MARKLEEVILLE CA 96120

THE HONORABLE EDWARD R JAGELS
KERN COUNTY DISTRICT ATTORNEY
1215 TRUXTUN AVE
BAKERSFIELD CA 93301

THE HONORABLE GARY LIEBERSTEIN
NAPA COUNTY DISTRICT ATTORNEY
931 PARKWAY MALL
NAPA CA 94559

THE HONORABLE TODD D RIEBE
AMADOR COUNTY DISTRICT ATTORNEY
708 COURT ST STE 202
JACKSON CA 95642

THE HONORABLE RON CALHOUN
KINGS COUNTY DISTRICT ATTORNEY
1400 W LACEY BLVD
HANFORD CA 93230

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NEVADA COUNTY DISTRICT ATTORNEY
201 CHURCH ST STE 8
NEVADA CITY CA 95959

THE HONORABLE MICHAEL RAMSEY
BUTTE COUNTY DISTRICT ATTORNEY
25 COUNTY CTR DR
OROVILLE CA 95965

THE HONORABLE GERHARD LUCK
LAKE COUNTY DISTRICT ATTORNEY
255 N FORBES ST
LAKEPORT CA 95453

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ORANGE COUNTY DISTRICT ATTORNEY
401 CIVIC CTR DR WEST
SANTA ANA CA 92701

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CALAVERAS COUNTY DISTRICT ATTORNEY
891 MTN RANCH RD
SAN ANDREAS CA 95249

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LASSEN COUNTY DISTRICT ATTORNEY
220 S LASSEN ST STE 8
SUSANVILLE CA 96130

THE HONORABLE BRAD FENOCCHIO
PLACER COUNTY DISTRICT ATTORNEY
11562 B AVE
AUBURN CA 95603

THE HONORABLE JOHN POYNER
COLUSA COUNTY DISTRICT ATTORNEY
547 MARKET ST
COLUSA CA 95932

THE HONORABLE STEVE COOLEY
LA COUNTY DISTRICT ATTORNEY
210 W TEMPLE ST STE 18000
LOS ANGELES CA 90012-3210

THE HONORABLE JEFF CUNAN
PLUMAS COUNTY DISTRICT ATTORNEY
520 MAIN ST RM 404
QUINCY CA 95971

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CONTRA COSTA COUNTY DISTRICT ATTORNEY
PO BOX 670
MARTINEZ CA 94553

THE HONORABLE ERNEST LICALS
MADERA COUNTY DISTRICT ATTORNEY
209 W YOSEMITE AVE
MADERA CA 93637

THE HONORABLE GROVER C TRASK II
RIVERSIDE COUNTY DISTRICT ATTORNEY
4075 MAIN ST
RIVERSIDE CA 92501

THE HONORABLE MICHAEL RIESE
DEL NORTE COUNTY DISTRICT ATTORNEY
450 H ST STE 171
CRESCENT CITY CA 95531

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MARIN COUNTY DISTRICT ATTORNEY
3501 CIVIC CTR DR RM 130
SAN RAFAEL CA 94903

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SACRAMENTO COUNTY DISTRICT ATTORNEY
901 G ST
SACRAMENTO CA 95814

THE HONORABLE GARY L LACY
EL DORADO COUNTY DISTRICT ATTORNEY
515 MAIN ST
PLACERVILLE CA 95667

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PO BOX 730
MARIPOSA CA 95338

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SAN BENITO COUNTY DISTRICT ATTORNEY
419 FOURTH ST, FL 2
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FRESNO COUNTY DISTRICT ATTORNEY
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FRESNO CA 93721

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MENDOCINO COUNTY DISTRICT ATTORNEY
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UKIAH CA 95482

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SAN BERNARDINO COUNTY DISTRICT ATTORNEY
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SAN BERNARDINO CA 92415-0004

THE HONORABLE ROBERT HOLZAPFEL
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MERCED COUNTY DISTRICT ATTORNEY
2222 M ST
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EUREKA CA 95501

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MODOC COUNTY DISTRICT ATTORNEY
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ALTURAS CA 96101-4020

THE HONORABLE KAMALA HARRIS
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SAN FRANCISCO CA 94103

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EL CENTRO CA 92243

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MONO COUNTY DISTRICT ATTORNEY
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BRIDGEPORT CA 93517

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STOCKTON CA 95201-0990

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VENTURA COUNTY DISTRICT ATTORNEY
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VENTURA CA 93009

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SAN MATEO COUNTY DISTRICT ATTORNEY
400 COUNTY CTR FL 3
REDWOOD CITY CA 94063

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SAN JOSE CA 95110

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