

SIXTY-DAY NOTICE OF INTENT TO SUE FOR VIOLATION OF THE SAFE DRINKING WATER  
AND TOXIC ENFORCEMENT ACT OF 1986

(*Cal. Health & Safety Code § 25249.5, et seq.*) ("Proposition 65")

May 28, 2009

Janis Hughes, President, or  
Current President/CEO  
William Watson Management  
7400 Center Avenue, Suite 105  
Huntington Beach, California 92647

Lewis C. Canfield, President, or  
Current President/CEO  
Western Auto Recycling-Dismantling  
7400 Center Avenue, Suite 105  
Huntington Beach, California 92647

Lewis C. Canfield, President, or  
Current President/CEO  
Harbor Auto Liquidators  
7400 Center Avenue, Suite 105  
Huntington Beach, California 92647

Janis Hughes, President, or  
Current President/CEO  
U-Pick U-Save Self Serv Auto Dismantling  
Newport Lease and Rental, Inc.  
7400 Center Avenue, Suite 105  
Huntington Beach, California 92647

AND THE PUBLIC PROSECUTORS LISTED ON THE ATTACHED CERTIFICATE OF SERVICE

Re: **Violations of Proposition 65 concerning Top Post Lead Terminal Cables.**

Ms. Hughes and Mr. Canfield, or whom this may concern:

**Consumer Advocacy Group, Inc.** ("CAG"), the noticing entity, serves this Notice of Violation ("Notice") upon William Watson Management, Western Auto Recycling-Dismantling, Harbor Auto Liquidators, U-Pick U-Save Self Serv Auto Dismantling, and Newport Lease and Rental, Inc. ("Violators") pursuant to and in compliance with Proposition 65. Violators may contact CAG concerning this Notice through its designated person within the entity, its attorney, Reuben Yeroushalmi, Esq., 3700 Wilshire Boulevard, Suite 480, Los Angeles, CA 90010, telephone no. (213) 382-3183, facsimile no. (213) 382-3430. This Notice satisfies a prerequisite for CAG to commence an action against Violators to enforce Proposition 65. The violations addressed by this Notice occurred in Los Angeles County. CAG is serving this Notice upon each person or entity responsible for the alleged violations, the California Attorney General, the district attorney for each county where alleged violations occurred, and the City Attorney for each city with a population (according to the most recent decennial census) of over 750,000 located within counties where the alleged violations occurred.

- CAG is a registered corporation based in California. By sending this Notice, CAG is acting "in the public interest" pursuant to Proposition 65. CAG is a nonprofit entity dedicated to protecting the environment, improving human health, and supporting environmentally sound practices.
- This Notice concerns violations of the warning prong of Proposition 65, which states 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 giving clear and reasonable warning to such individual . . ." *Cal. Health & Safety Code § 25249.6.*
- **Top Post Lead Terminal Cables** contain lead, a chemical known to the State to cause cancer and reproductive toxicity, reproductive, female, male. On February 27, 1987, the Governor of California

added lead and lead compounds to the list of chemicals known to the State to cause reproductive toxicity, reproductive, female, male, and on October 1, 1992, the Governor added lead to the list of chemicals known to the State to cause cancer. Both additions took place more than twenty (20) months before CAG served this Notice.

- This Notice addresses consumer products exposures. A “[c]onsumer products exposure’ is an exposure which results from a person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service.” *Cal. Code Regs. 27 § 25602(b)*.

Violators caused consumer product exposures in violation of Proposition 65 by making available for sale in California to consumers Top Post Lead Terminal Cables. Top Post Lead Terminal Cables contain no Proposition 65-complaint warnings. Nor did Violators, with regard to Top Post Lead Terminal Cables, provide a system of signs, public advertising identifying the system and toll-free information services, or any other system, which provided clear and reasonable warnings. Nor did Violators, with regard to Top Post Lead Terminal Cables, provide identification of the product at retail outlets in a manner that provided a warning through shelf labeling, signs, menus, or a combination thereof. Top Post Lead Terminal Cables are designed for use on motor vehicle batteries.

Consumers sustain exposures by pulling the desired Top Post Lead Terminal Cable from automobiles found at Violators’ premises, including but not limited to those located at 1560 E. Mission Boulevard, Pomona, CA 91766; 1945 South Union Bakersfield, CA 93307; and 17800 S. Vermont Avenue, Gardena, CA 90248 with their own tools without wearing gloves or by touching bare skin with gloves after handling the Top Post Lead Terminal Cable, hand to mouth contact, or breathing in particulate matter from product as part of the process of removing the Top Post Lead Terminal Cables from an automobile. Persons also suffer exposures after purchasing the Top Post Lead Terminal Cables and later installing them into automobiles off the Violators’ premises or otherwise handling the products.

- This Notice also concerns occupational exposures. An “[o]ccupational exposure’ means an exposure to any employee in his or her employer’s workplace.” *Cal. Code Regs. 25 § 25602(f)*.

Violators caused occupational exposures in violation of Proposition 65 by allowing employees to handle Top Post Lead Terminal Cables without having first given clear and reasonable warnings to such employees that by handling Post Lead Terminal Cables such employees would suffer exposures to lead.

Employees suffered exposures by pulling Top Post Lead Terminal Cables from automobiles found at Violators’ premises including but not limited to those located at 1560 E. Mission Boulevard, Pomona, CA 91766; 1945 South Union Bakersfield, CA 93307; and 17800 S. Vermont Avenue, Gardena, CA 90248, upon the request of customers or to otherwise assist a customer or perform the duties of their employment, without wearing gloves or by touching bare skin with gloves after handling the Top Post Lead Terminal Cable, hand to mouth contact, or breathing in particulate matter from product as part of the process of removing the product from an automobile.

***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 incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997.

This approval specifically placed certain conditions with regard to occupational exposures on Proposition 65, including that it does not apply to (a) the conduct of manufacturers occurring outside the State of

California; and (b) employers with less than 10 employees. The approval also provides that an employer may use any means of compliance in the general hazard communication requirements to comply with Proposition 65. It also requires that supplemental enforcement be 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 California Attorney General.

- This Notice also addresses environmental exposures. An “[e]nvironmental exposure” is an exposure which may foreseeably occur as the result of contact with an environmental medium, including, but not limited to, ambient air, indoor air, drinking water, standing water, running water, soil vegetation, or manmade or natural substances, either through inhalation, ingestion, skin contact or otherwise. Environmental exposures include all exposures which are not consumer products exposures, or occupational exposures.” *Cal. Code Regs. 27 § 25602(c)*.

Violators caused environmental exposures by not providing any Proposition 65-compliant warnings at its facilities located at 1560 E. Mission Boulevard, Pomona, CA 91766; 1945 South Union Bakersfield, CA 93307; and 17800 S. Vermont Avenue, Gardena, CA 90248, among other locations where such exposures could foreseeably occur, to persons who could foreseeably come into contact with Top Post Lead Terminal Cables. Such exposures also occurred beyond the property owned or controlled by Violators.

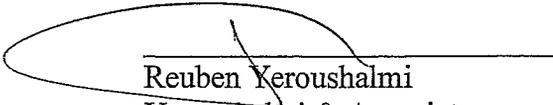
The principal routes of exposure were through dermal contact, ingestion, and inhalation as described above.

The foregoing violations occurred each day between May 28, 2006, and May 28, 2009, and are ever continuing thereafter.

Proposition 65 requires that notice of intent to sue be given to the violator(s) sixty (60) days before the suit is filed. *Cal. Health & Safety Code § 252549.7(d)(1)*. With this letter, CAG gives notice of the alleged violations to Violator and the appropriate governmental authorities. In absence of any action by the appropriate governmental authorities within sixty (60) calendar days of the sending of this notice (plus five (5) calendar days because the place of address is within the State of California), CAG may file suit. *See Cal. Health & Safety Code § 25249.7(d)(1); Cal. Code Regs. 27 § 25903(d)(1); and Cal. Code Civ. Proc. § 1013*. CAG prefers to resolve this matter in the interest of the public short of formal litigation.

With this Notice, CAG also serves the following: THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACTION 1986 (PROPOSITION 65): A SUMMARY.

Dated: May 28, 2009

  
Reuben Yeroushalmi  
Yeroushalmi & Associates  
Attorneys for Consumer Advocacy Group, Inc.

## Appendix A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

#### THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACTION 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the Office of Environmental Health Hazard Assessment, the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and its implementing regulations (see citations below) for further information.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, Sections 25000 through 27000.

#### WHAT DOES PROPOSITION 65 REQUIRE?

**The "Governor's List."** Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 735 chemicals have been listed as of November 16, 2001. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release, or otherwise engage in activities involving those chemicals must comply with the following:

**Clear and Reasonable Warnings.** A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is

exposed. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the chemical.

**Prohibition from discharges into drinking water.** A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the chemical.

#### DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. The law exempts:

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

**Businesses with nine or fewer employees.** Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees.

**Exposures that pose no significant risk of cancer.** For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "no significant risk" levels for more than 250 listed carcinogens.

**Exposures that will produce no observable reproductive effect at 1,000 times the level in question.** For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000

times the level in question. In other words, the level of exposure must be below the "no observable effect level (NOEL)," divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect.

*Discharge that do not result in a "significant amount" of the listed chemical entering into any source of drinking water.* The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the list chemical has not, does not, or will not enter any drinking water source, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" or "no observable effect" test if an individual were exposed to such an amount in drinking water.

#### **HOW IS PROPOSITION 65 ENFORCED?**

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys (those in cities with a population exceeding 750,000). Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. A notice must comply with the information and procedural requirements specified in regulations (Title 27, California Code of Regulations, Section 25903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of the notice.

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

#### **FOR FURTHER INFORMATION...**

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900.

#### **§27000.**

#### **Chemicals Required by State or Federal Law to Have Been Tested for Potential to Cause Cancer or Reproductive Toxicity, but Which Have Not Been Adequately Tested As Required.**

(a) The Safe Drinking Water and Toxic Enforcement Act of 1986 requires the Governor to publish a list of chemicals formally required by state or federal agencies to have testing for carcinogenicity or reproductive toxicity, but that the state's qualified experts have not found to have been adequately tested as required [Health and Safety Code 25249.8)c)].

Readers should note a chemical that already has been designated as known to the state to cause cancer or reproductive toxicity is not included in the following listing as requiring additional testing for that particular toxicological endpoint. However, the "data gap" may continue to exist, for purposes of the state or federal agency's requirements. Additional information on the requirements for testing may be obtained from the specific agency identified below.

(b) Chemicals required to be tested by the California Department of Pesticide Regulation.

The Birth Defect Prevention Act of 1984 (SB 950) mandates that the California Department of Pesticide Regulation (CDPR) review chronic toxicology studies supporting the registration of pesticidal active ingredients. Missing or unacceptable studies are identified as data gaps. The studies are conducted to fulfill generic data requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which is administered by the United States Environmental Protection Agency (U.S. EPA). The studies are reviewed by CDPR according to guidelines and standards promulgated under FIFRA. Thus, older studies may not meet current guidelines.

The existence of a data gap for a compound does not indicate a total lack of information on the carcinogenicity or reproductive toxicity of the compound. In some cases, information exists in the open scientific literature, but SB 950 requires specific, additional information. A data gap does not necessarily indicate that an oncogenic or reproductive hazard exists. For the purposes of this list, a data gap is still considered to be present until the study is reviewed and found to be acceptable.

Following is a listing of SB 950 data gaps for oncogenicity, reproduction, and teratology studies for the non-200 pesticidal active ingredients. This list will change as data gaps are filled by additional data or replacement studies.

[Final Paragraph and List Omitted].

Top Post Lead Terminal Cables

**CERTIFICATE OF MERIT**

Health and Safety Code Section 25249.7(d)

I, Reuben Yeroushalmi, hereby declare:

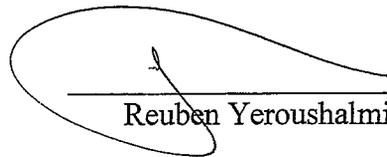
1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the party(s) identified in the notice(s) has violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party.
3. I have consulted with at least one person with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the action.
4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the 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.
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: 5/28/2009

By:  REUBEN YERUSHALMI

The scientific data or supporting documentation concerning the 60-Day Notice sent to **William Watson Management, Harbor Auto Liquidators, Western Auto Recycling, U-Pick U-Save Self Serv Auto Dismantling, and Newport Lease and Rental, Inc.** is identical to that which my office previously sent to the Office of the Attorney General attached to the 60-Day Notice sent to **U-Pick-U-Save Self Serv Auto Dismantling** on or about July 3, 2008, and concerning the hazardous effects of the listed chemicals contained in the consumer product listed on each of these notices. Each of these notices relate to Proposition 65 violations concerning the same product, for which we believe each noticed entity is responsible. To avoid needless accumulation of duplicative materials at the Office of the Attorney General, and to simplify and economize sending notice, please refer to supporting documentation concerning the notice sent to **U-Pick-U-Save Self Serv Auto Dismantling** on or about July 3, 2008. Please allow this previously sent material to constitute adequate supporting documentation in accordance with, and in satisfaction of, the requirements of California Code of Regulations, title 11, section 3102.

Dated: May 28, 2009



Reuben Yeroushalmi

**CERTIFICATE OF SERVICE**

I am over the age of 18 and not a party to this case. I am a resident of or employed in the county where the mailing occurred. My business address is 3700 Wilshire Boulevard, Suite 480, Los Angeles, CA 90010.

I SERVED THE FOLLOWING:

- 1) 60-Day Notice of Intent to Sue Under Health & Safety Code Section 25249.6
- 2) Certificate of Merit: Health and Safety Code Section 25249.7(d)
- 3) Certificate of Merit (Attorney General Copy): Factual information sufficient to establish the basis of the certificate of merit (*sent only to Attorney General*)
- 4) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary by enclosing copies of the same in a sealed envelope, along with an unsigned copy of this declaration, addressed to each person shown below and depositing the envelope in the U.S. mail with the postage fully prepaid on the date listed below. Place of Mailing: Los Angeles, CA

**Name and address of each violator to whom documents were mailed:**

Janis Hughes, President, or Current President/CEO William Watson Management 7400 Center Avenue, Suite 105 Huntington Beach, California 92647	Lewis C. Canfield, President, or Current President/CEO Western Auto Recycling-Dismantling 7400 Center Avenue, Suite 105 Huntington Beach, California 92647
Lewis C. Canfield, President, or Current President/CEO Harbor Auto Liquidators 7400 Center Avenue, Suite 105 Huntington Beach, California 92647	Janis Hughes, President, or Current President/CEO U-Pick U-Save Self Serv Auto Dismantling Newport Lease and Rental, Inc. 7400 Center Avenue, Suite 105 Huntington Beach, California 92647

**Name and address of each public prosecutor to whom documents were mailed:**

Los Angeles County District Attorney 210 W Temple St, 18th Floor Los Angeles, CA 90012	Office of the Attorney General P.O. Box 70550 Oakland, CA 94612-0550	Los Angeles City Attorney 200 N Main St Ste 1800 Los Angeles CA 90012
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date of Mailing: 5/28/09

By: \_\_\_\_\_  
Suzana Solis