

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”)

March 23, 2011

James Simpson, President, or
Current President/CEO
Bevmo Holdings, LLC
1470 Enea circl STE #1600
Concord, CA 94520

James Simpson, President, or
Current President/CEO
Bevmo Holdings, LLC
2394 E. Camelback Rd.
Phoenix, AZ 85016

James Simpson, President, or
Current President/CEO
Bevmo Holdings, LLC
430 Park Ave.
New York, NY 10022

Alan Johnson, President/CEO, or
Current President/CEO
Beverages & More, Inc.
1470 Enea Circle, #1600
Concord, CA 94520

Alan Johnson, President/CEO or
Current President/CEO
Beverages & More, Inc.
2338 W. Royal Palm Rd., Ste. J
Phoenix, AZ 85021

Alan Johnson, President/CEO, or
Current President/CEO
Beverages & More, Inc.
430 Park Ave.
New York, NY 10022

Alan Johnson, President/CEO, or
Current President/CEO
Bevmo Intermediate Holdings, Inc.
2394 E. Camelback Rd.
Phoenix, AZ 85016

Alan Johnson, President/CEO, or
Current President/CEO
Bevmo Intermediate Holdings, Inc.
1470 Enea Circle, #1600
Concord, CA 94520

AND THE PUBLIC PROSECUTORS LISTED ON THE DISTRIBUTION LIST ACCOMPANYING THE ATTACHED CERTIFICATE OF SERVICE

Re: Violations of Proposition 65 concerning **Individually Wrapped Cigars**

Dear Mr. Simpson, Mr. Johnson, and to whom else this may concern:

Consumer Advocacy Group, Inc. (“CAG”), the noticing entity located at **9903 Santa Monica Boulevard #225, Beverly Hills, California 90212**, serves this Notice of Violation (“Notice”) on Bevmo Holdings, LLC, Beverages & More, Inc., and Bevmo Intermediate Holdings, LLC (collectively “Violators”) pursuant to and in compliance with Proposition 65. Violator may contact CAG concerning this Notice through its designated person within the entity, its attorney, Reuben Yeroushalmi, Esq., 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, CA 90212, telephone no. (310) 623-1926, facsimile no. (310) 623-1930. This Notice satisfies a prerequisite for CAG to commence an action against Violator in any Superior Court of California to enforce Proposition 65. The violations addressed by this Notice occurred at numerous locations in each county in California as reflected in the district attorney addresses listed in the attached distribution list. 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. CAG is an organization dedicated to protecting the environment, improving human health, and supporting environmentally sound practices. By sending this Notice, CAG is acting “in the public interest” pursuant to Proposition 65.

- 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.*
- **Individually Wrapped Cigars** (“Cigars”) are cylindrical rolls of tobacco leaves intended for smoking, with thin brown paper or a single tobacco leaf as an outer cover. Users typically cut off an end, place the **Cigars** in their mouth and light the other end. The user then typically draws the smoke into their mouth.
- The **Cigars** contain a myriad of chemicals known to the state of California to cause cancer and reproductive toxicity. Below is a listing of all chemicals contained in **Cigars** (collectively “Constituent Chemicals”). In addition, the dates which the Governor of California added the Constituent Chemicals to the list of chemicals known to the State to cancer and reproductive toxicity is reproduced below:

Carcinogens

(4-Aminodiphenyl)	2/27/1987
Dibenz[a,h]acridine	1/1/1988
Chrysene	1/1/1990
Chromium (hexavalent compounds)	2/27/1987
Captan	1/1/1990
Cadmium	5/1/1997
Benzo[k]fluoranthene	7/1/1987
Benzo[j]fluoranthene	7/1/1987
Benzo[b]fluoranthene	7/1/1987
Benzo[a]pyrene	7/1/1987
Benzene	2/27/1987
Benz[a]anthracene	7/1/1987
Arsenic (inorganic arsenic compounds)	2/27/1987
Aniline	1/1/1990
Acrylonitrile	1/1/1987
Acetamide	1/1/1990
Acetaldehyde	4/1/1988
7H-Dibenzo[c,g]carbazole	1/1/1988
4-Aminobiphenyl	2/27/1987
2-Nitropropane	1/1/1988
2-Naphthylamine	2/27/1987
1-Naphthylamine	10/1/1989
1,3-Butadiene	4/1/1988
1, 1 -Dimethylhydrazine (UDMH)	10/1/1989
(4-Aminodiphenyl)	2/27/1987
Urethane	1/1/1988

Reproductive Toxicity

Arsenic (inorganic Oxides)	5/1/1997
Benzene	12/26/1997
Carbon disulfide	7/1/1989
Lead	2/27/1987
Toluene	1/1/1991
Urethane	10/1/1994
Cadmium	5/1/1997
Carbon monoxide	7/1/1989
Nicotine	4/1/1990
1,3-Butadiene	5/16/2004

The aforementioned dates for each listed chemical were each 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. tit. 27, § 25602(b)*.

Violators caused consumer product exposures in violation of Proposition 65 by producing or making available for distribution or sale in California to consumers **Cigars**. Violators caused consumer product exposures during sale of **Cigars**. The packaging for **Cigars**, meaning any label or other written, printed or graphic matter affixed to or accompanying the product (or its container or wrapper) contains no Proposition 65-complaint warning. Nor did Violators, with regard to **Cigars**, 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 **Cigars**, provide identification of the product at retail outlets in a manner that provided a warning through shelf labeling, signs, menus, or a combination thereof. **Cigars** are designed for use to smoke. Even in instances where the packaging of **Cigars** has a warning, the violators remove the **Cigars** from the packaging and sell them individually in order to maximize profit, and therefore not allowing consumers to receive the warning; in effect, there is no warning received by consumers.

Proposition 65 violations regarding the **Cigars** occurred at locations throughout California including, but not limited to, the following:

1. Bevmo!, 2000 N. Tustin St., Orange, CA 92865
2. Bevmo!, 6520 Canoga Ave., Canoga Park, CA 91303
3. Bevmo!, 6820 Katella Ave., Cypress, CA. 90630
4. Bevmo!, 7100 Santa Monica Blvd., West Hollywood, CA 90046
5. Bevmo!, 10984 Santa Monica Blvd., Los Angeles, CA 90025
6. Bevmo!, 1775 N. Victory Place, Burbank, CA 91502
7. Bevmo!, 12123 Ventura Blvd., Studio City, CA 91604
8. Bevmo!, 200 Brand Blvd., Glendale, CA 91204
9. Bevmo!, 21301 Hawthorne Blvd., Torrance, CA 90503
10. Bevmo!, 3212 Wilshire Blvd., Santa Monica, CA 90404
11. Bevmo!, 2533-A Pacific Coast Hwy, Torrance, CA 90505
12. Bevmo!, 19524 Nordhoff St., Ste 4, Northridge, CA 91324
13. Bevmo!, 17965 Ventura Blvd., San Fernando Valley, CA 91316

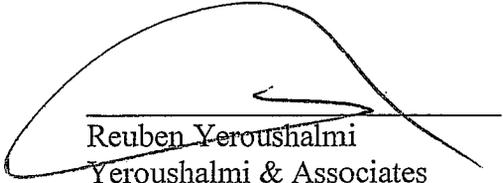
14. Bevmo!, 755 E. Birch Street, Brea, CA 92821
15. Bevmo!, 6521 E. Pacific Coast Hwy., Long Beach, CA 90803
16. Bevmo!, 1301 Van Ness Ave., San Francisco, CA 94109
17. Bevmo!, 3445 Geary Blvd., San Francisco, CA 94118
18. Bevmo!, 201 Bayshore Blvd., San Francisco, CA 94124
19. Bevmo!, 4915 Junipero Serra Blvd., Colma, CA 94014
20. Bevmo!, 525 Embarcadero W, Oakland, CA 94607
21. Bevmo!, 1282 El Camino Real, San Bruno, CA 94066
22. Bevmo!, 5717 Christie Ave., Emeryville, CA 94608
23. Bevmo!, 8410 Center Dr., La Mesa, CA 91942
24. Bevmo!, 3210 Rosecrans Pl., San Diego, CA 92110
25. Bevmo!, 925A Camino De La Reina, San Diego, CA 92108
26. Bevmo!, 11475 Carmel Mountain Rd., San Diego, CA 92128
27. Bevmo!, 212 N. El Camino Real, Encinitas, CA 92024
28. Bevmo!, 6755 Mira Mesa Blvd., San Diego, CA 92121
29. Bevmo!, 168 S. Solana Hills Dr., Solana Beach, CA 92075
30. Bevmo!, 3900 Sisk Rd., Modesto, CA 95356
31. Bevmo!, 3218 Countryside Dr., Turlock, CA 95380

These violations occurred each day between March 24, 2008, and March 24, 2011, and are ever continuing thereafter.

The primary route of exposure for the violations is inhalation contact caused when affected persons breathe in the ambient air containing second-hand tobacco smoke or environmental tobacco smoke, causing exposure of Tobacco Smoke and its Constituent Chemicals to the mouth, throat, bronchi, esophagi, and lungs. Exposure for the **Cigars** violations is also through ingestion and dermal contact caused when affected persons place the cigars in their mouths, including exposure to the tobacco smoke in their mouths during use, causing exposure to the mouth, throat, esophagi, stomach and intestinal tract. Exposure of Tobacco Smoke and its Constituent Chemicals generates risks of cancer and reproductive toxicity to the affected persons.

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 ten (10) calendar days because the place of address is within the United States but beyond the State of California), CAG may file suit. *See Cal. Code Civ. Proc.* § 1013; *Cal. Health & Safety Code* § 25249.7(d)(1); and *Cal. Code Regs.* tit. 27, § 25903(d)(1). CAG is ready and willing to discuss the possibility of resolving its grievances in the public interest short of formal litigation.

Dated: M. 2/25/11


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

**BEVMO HOLDINGS, LLC, BEVERAGES & MORE, INC., AND BEVMO
INTERMEDIATE HOLDINGS, LLC
Individually Wrapped Cigars**

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: *March 25/11*

By: 
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 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, CA 90212.

ON THE DATE SHOWN BELOW, 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 (*only sent 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. Place of Mailing: Los Angeles, CA

Name and address of each party to whom documents were mailed:

James Simpson, President, or
Current President/CEO
BEVMO HOLDINGS, LLC
1470 Enea circl STE #1600
Concord, CA 94520

James Simpson, President, or
Current President/CEO
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Current President/CEO
BEVMO INTERMEDIATE
HOLDINGS, INC.
1470 Enea Circle, #1600
Concord, CA 94520

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

See Distribution List

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 03-31-2011 by: _____
Joannie Yoon

Distribution List

Alameda County District Attorney 1225 Fallon St, Room 900 Oakland, CA 94612	Los Angeles County District Attorney 210 W Temple St, 18th Floor Los Angeles, CA 90012	Mono County District Attorney PO Box 617 Bridgeport, CA 93517
Alpine County District Attorney PO Box 248 Markleeville, CA 96120	Madera County District Attorney 209 W Yosemite Ave Madera, CA 93637	San Joaquin County District Attorney PO Box 990 Stockton, CA 95201-0990
Amador County District Attorney 708 Court, Suite 202 Jackson, CA 95642	Mariposa County District Attorney P.O. Box 730 Mariposa, CA 95338	San Francisco County District Attorney 850 Bryant St, Rm 322 San Francisco, CA 94103
Butte County District Attorney 25 County Center Dr. Oroville, CA 95965-3385	Marin County District Attorney 3501 Civic Center Drive, #130 San Rafael, CA 94903	San Diego County District Attorney 330 W. Broadway, Ste 1300 San Diego, CA 92101-3803
Calaveras County District Attorney 891 Mountain Ranch Road San Andreas, CA 95249	Mendocino County District Attorney P.O. Box 1000 Ukiah, CA 95482	San Bernardino County District Attorney 316 N Mountain View Ave San Bernardino, CA 92415-0004
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	San Francisco City Attorney # 1 Dr. Carlton B. Goodlett Place, Suite 234 San Francisco, CA 94102
Colusa County District Attorney Courthouse, 547 Market St. Colusa, CA 95932	Inyo County District Attorney P.O. Drawer D Independence, CA 93526	Placer County District Attorney 10810 Justice Center Drive Suite 240 Roseville, CA 95678-6231
Contra Costa County District Attorney 725 Court St., Room 402 Martinez, CA 94553	Orange County District Attorney PO Box 808 Santa Ana, CA 92702	Merced County District Attorney 650 W. 20 th Street Merced, CA 95340
Del Norte County District Attorney 450 "H" St. Crescent City, CA 95531	Nevada County District Attorney 201 Church St, Suite 8 Nevada City, CA 95959-2504	Napa County District Attorney PO Box 720 Napa, CA 94559-0720
El Dorado County District Attorney 515 Main St. Placerville, CA 95667-5697	Plumas County District Attorney 520 Main Street, Rm 404 Quincy, CA 95971	Riverside County District Attorney 4075 Main St Riverside, CA 92501
Fresno County District Attorney 2220 Tulare St, Ste. 1000 Fresno, CA 93721	Sacramento County District Attorney 901 G Street Sacramento, CA 95814	San Benito County District Attorney 419 4th St Hollister, CA 95023
Glenn County District Attorney PO Box 430 Willows, CA 95988	San Luis Obispo County District Attorney County Government Center, Rm 450 San Luis Obispo, CA 93408	Siskiyou County District Attorney PO Box 986 Yreka, CA 96097
Humboldt County District Attorney 825 5th St., 4 th Floor Eureka, CA 95501	San Mateo County District Attorney 400 County Center Redwood City, CA 94063	Solano County District Attorney 600 Union Ave Fairfield, CA 94533
Imperial County District Attorney 939 W. Main St., 2 nd Floor El Centro, CA 92243-2860	Santa Barbara County District Attorney 1112 Santa Barbara St. Santa Barbara, CA 93101	Sonoma County District Attorney 600 Administration Dr., Rm 212-J Santa Rosa, CA 95403
Kern County District Attorney 1215 Truxtun Ave. Bakersfield, CA 93301	Santa Clara County District Attorney 70 W Hedding St. San Jose, CA 95110	Shasta County District Attorney 1525 Court St, 3rd Floor Redding, CA 96001-1632
Kings County District Attorney Gov't Ctr, 1400 W Lacey Blvd Hanford, CA 93230	Santa Cruz County District Attorney PO Box 1159 Santa Cruz, CA 95061	Sierra County District Attorney PO Box 457 Downieville, CA 95936-0457
Lake County District Attorney 255 N Forbes St Lakeport, CA 95453-4790	Stanislaus County District Attorney PO Box 442 Modesto, CA 95353	Trinity County District Attorney PO Box 310 Weaverville, CA 96093
Modoc County District Attorney 204 S. Court Street Alturas, CA 96101-4020	Sutter County District Attorney 446 Second Street Yuba City, CA 95991	Yuba County District Attorney 215 5th St Marysville, CA 95901
San Diego City Attorney City Center Plaza 1200 3rd Ave # 1100 San Diego, CA 92101	Lassen County District Attorney 200 S Lassen St, Suite 8 Susanville, CA 96130	Monterey County District Attorney PO Box 1131 Salinas, CA 93902
Tuolumne County District Attorney 2 S Green St Sonora, CA 95370	Tulare County District Attorney County Civic Center, Rm 224 Visalia, CA 93291	Yolo County District Attorney 310 Second St Woodland, CA 95695
Ventura County District Attorney 800 S Victoria Ave Ventura, CA 93009	Tehama County District Attorney P.O. Box 519 Red Bluff, CA 96080	San Jose City Attorney 151 W. Mission St. San Jose, CA 95110