

**60-DAY NOTICE OF VIOLATION**  
SENT IN COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE §25249.5(et seq.)

**DATE: June 25, 2013**

**TO THE PROCECUTING AUTHORITIES:**  
**OFFICE OF THE ATTORNEY GENERAL**  
**ATTN: PROPOSITION 65 COORDINATOR**  
**PROPOSITION 65 ENFORCEMENT**  
**REPORTING**  
**P.O. BOX 70550**  
**OAKLAND, CALIFORNIA 94612**

**SAN JOSE CITY ATTORNEY**  
**200 E. SANTA CLARA ST.**  
**16TH FLOOR**  
**SAN JOSE, CA 95113**

**SACRAMENTO COUNTY DISTRICT**  
**ATTORNEY**  
**901 G STREET**  
**SACRAMENTO, CA 95814**

**SANTA CLARA COUNTY**  
**DISTRICT ATTORNEY**  
**70 W. HEDDING STREET, WEST WING**  
**SAN JOSE, CA 95110**

**SACRAMENTO CITY ATTORNEY**  
**OFFICE OF THE CITY ATTORNEY**  
**915 I STREET, 4TH FLOOR**  
**SACRAMENTO, CA 95814-2608**

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**TO VIOLATORS LISTED IN EXHIBIT C:**

**FROM: J. DAWN GROSS**

**I. INTRODUCTION**

My name is J. Dawn Gross. I am a citizen of the State of California acting in the interest of the general public. I seek to promote awareness of exposures to toxic chemicals in products sold in California and, if possible, to improve human health by reducing hazardous substances contained in such items. This Notice is provided to the public agencies listed above pursuant to California Health & Safety Code 25249.6 et seq. ("Proposition 65"). An information sheet regarding Proposition 65 is attached as **Exhibit A**.

**II. NOTICE OF VIOLATIONS AND POTENTIAL DANGERS TO THE PUBLIC**

This notice concerns exposure to Environmental Tobacco Smoke/Consumer Tobacco Smoke from use of Tobacco Products/Second Hand Smoke ("Listed Chemicals") without proper notice by parties identified herein as "Violators." I, and my representatives, and investigators observed violations at these locations, and we are informed and believe that these violations are still ongoing each and every day. I and my representatives are informed and believe that the Listed Chemicals to which members of the public are being exposed by the Violators are known to the State of California to cause cancer and reproductive toxicity, developmental, male, and female. *See Cal. Code Regs. 27 § 27000(b). (c).*

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.

The Governor of California added each of the above-listed Listed Chemicals to the list of chemicals known to cause cancer or reproductive toxicity more than twenty (20) months prior to the date of this Notice. See *Cal. Code Regs. 27 § 27000(b), (c)*. Accordingly, each of the above-listed ("Listed Chemicals") is fully subject to Proposition 65 warning requirements and discharge prohibitions. See *Cal. Health & Safety Code § 25249.9, 25249.10*.

**See Exhibit B – The Listed Chemicals**

### **Environmental Exposure**

This Notice addresses Environmental Exposures to the Listed Chemicals. "An 'environmental 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 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 own and/or operate, and/or possess sufficient control over the Tobacco Seller that is located in California, during the period referenced below, have and continue to violate Proposition 65 by allowing persons to smoke cigarettes and other tobacco products in their shop, thereby facilitating the production of an environment in which Second-Hand Tobacco Smoke and Environmental Tobacco Smoke exists. Violators violated Proposition 65, during the period referenced below, by allowing and causing their employees and consumers, including the tobacco smoke which they inhaled air containing tobacco smoke, which contained the Tobacco Smoke and the Listed Chemicals in concentrated levels, without first providing Proposition 65-compliant warnings to such exposed persons prior to such exposures. Violators thereby caused Environmental Exposures during the referenced period on the property owned and/or controlled by Violators listed on **Exhibit C**.

### **Occupational Exposure**

This Notice also addresses Occupational Exposures to the Listed Chemicals. "Occupational exposure' means an exposure to any employee in his or her employer's workplace." *Cal. Code Regs. 27 § 25602(f)*.

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. Violators own and/or operate a construction Site a business in the State of California. During the period referenced below, Violators violated Proposition 65 by allowing persons to smoke cigarettes inside Violators' businesses, causing its employees to be exposed to Tobacco Smoke and the Listed Chemicals of the Second-Hand Tobacco Smoke and Environmental Tobacco Smoke produced on or around the site, without providing clear and reasonable warnings in compliance with Proposition 65 prior to such exposures. Violators' employees were exposed to Tobacco Smoke and Listed Chemicals as they inhaled the ambient air containing the Listed Chemicals in the process of smoking cigarettes, cigars, pipe tobacco, electronic cigarette and other tobacco products. Since Violators were employers, and the Listed Chemicals on the property of Violators, Violators has caused an "Occupational Exposure" during the referenced period. The general locations of the unlawful occupational exposure occurred at the areas owned or controlled by Violators where Violators' employees tended the task of cleaning vehicles in which smoking had occurred by Violators' customers.

**Period of Violations**

J. Dawn Gross , her representatives, and investigators are informed and believe the violations discussed above occurred each day between 2/11/13 and 6/13/13, and that the Violator's violations have continued each day thereafter.

**Routes of Exposure**

The routes of exposure for the violations were and are inhalation, dermal contact, and skin absorption when tobacco smoke condensates accumulate on various surfaces. When affected persons breathed in the ambient air conditioning second-hand tobacco smoke or environmental tobacco smoke, they were exposed to Tobacco Smoke and its Listed Chemicals via their mouths, throats, bronchi, esophagi, and lungs. Exposure of Tobacco Smoke and its Listed Chemicals generated risks of cancer and reproductive toxicity to the affected persons.

Exposures to the listed chemicals from the use of the products have been occurring without clear and reasonable warning as required by Proposition 65, dating as far back as January 13, 2013. Without proper warning regarding the toxic effects of exposure to the listed chemicals resulting from contact with the products, California citizens lack the information necessary to make informed decisions on whether and how to eliminate (or reduce) the risk of exposure to the toxic chemical from the reasonably foreseeable use of the products.

**III. CONTACT INFORMATION**

Please direct all questions concerning this notice to me through my counsel's office at the following address and telephone number:

Thomas E. Kent, Esq.  
Law Offices of Thomas E. Kent  
2600 West Olive Avenue  
5th Floor

Burbank, CA 91505  
Tel: 818-333-5260

For general information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health Hazard Assessment's ("OEHHA") Proposition 65 Implementation Office at (909) 445-6900. For the Violators reference, I have attached a copy of "Proposition 65: A Summary" which has been prepared by OEHHA.

#### **IV. INTENDED REMEDIES AND LEGAL ACTIONS**

Based on the allegations set forth in this Notice, I intend to file a citizen enforcement lawsuit against the alleged Violators unless such Violators enter into a binding written agreement to:

- (1) Immediately stop allowing person's to smoke in and/or adjacent to their business premises;
- (2) Provide a clear and reasonable warning pursuant to Cal. Health & Safety Code § 25249.6.
- (3) Pay an appropriate civil penalty based on the factors enumerated in California Health & Safety Code 25249.7(b); and,
- (4) Reimburse noticing party for her costs, investigator fees, and attorney fees incurred in enforcing Proposition 65.

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Please be advised that if the alleged Violators are interested in resolving this dispute without resorting to time-consuming and expensive litigation, please feel free to contact my counsel identified in Section II, above. It should be noted that neither my counsel nor I can:

- (I) finalize any settlement after the 60-day notice period has expired; or
- (II) speak to the Attorney General or any District or City Attorney who received this Notice.

**Therefore, you are admonished that reaching an agreement with me will resolve my claims, such agreement may not satisfy the public prosecutors.**

**CERTIFICATE OF MERIT**

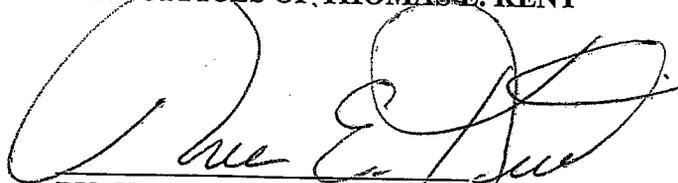
Health and Safety Code Section 25249.7(d)

I, Thomas E. Kent, Esq. hereby declare and state:

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 violators 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: June 25, 2013**

**LAW OFFICES OF THOMAS E. KENT**



BY: THOMAS E. KENT, ESQ.

**PROOF OF SERVICE**

I, the undersigned, do declare under penalty of perjury:

I am a citizen of the United States, and a resident of the State of California, over the age of 18 years, and not a party to the within action; my business address is United Process Servers at 225 East 9<sup>th</sup> Street, Suite #300, Los Angeles, CA 90015. I am a Registered Process Server, in the County of Los Angeles, State of California. My Process Server Registration No. is 2012174587.

On June 26, 2013, I served the following documents:

60 DAY NOTICE OF VIOLATIONS SENT IN COMPLIANCE WITH HEALTH AND SAFETY CODE SECTION 25249.7(d);

PROPOSITION 65: A SUMMARY;

CERTIFICATE OF MERIT; AND,

CERTIFICATE OF MERIT ATTACHMENTS (SERVED ONLY ON THE ATTORNEY GENERAL)

on the alleged Violators list below via United States Post Office, First Class Mail by placing a true and correct copy in a sealed envelope addressed to each person whose name and address is shown below the depositing the envelope in the United States mail with postage fully prepaid to each of the individuals and/or entities identified on **Exhibit C** to this Notice which is incorporated herein by this reference as well as providing copies of the notice to the public enforcers by placing a true and correct copy in a sealed envelope, addressed to each party listed below, and served as follows:

SACRAMENTO COUNTY DISTRICT  
ATTORNEY  
901 G STREET  
SACRAMENTO, CA 95814

SANTA CLARA COUNTY  
DISTRICT ATTORNEY  
70 W. HEDDING STREET,  
WEST WING  
SAN JOSE, CA 95110

SACRAMENTO CITY ATTORNEY  
915 I STREET, 4TH FLOOR  
SACRAMENTO, CA 95814-2608

SAN JOSE CITY ATTORNEY  
200 E. SANTA CLARA ST.  
16TH FLOOR  
SAN JOSE, CA 95113

Via Priority United States Mail:  
Office of the Attorney General  
ATTN: Proposition 65 Coordinator  
Proposition 65 Enforcement Reporting  
P.O. Box 70550  
Oakland, California 94612

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT AND THAT THIS PROOF OF SERVICE WAS EXECUTED THIS 26<sup>th</sup> DAY OF JUNE, 2013 AT ENCINO, CALIFORNIA.

  
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PUYA MOASSESFAR

Exhibit A

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), 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 OEHHA's implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. The statute is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. 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 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

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 and/or reproductive toxicity. This means that chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving listed 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 unless an exemption applies; for example, when exposures are sufficiently low (see below). The warning given must be "clear and reasonable." This

<sup>1</sup> All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

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. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

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. Some discharges are exempt from this requirement under certain circumstances discussed below.

#### DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Period. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

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. This includes all employees, not just those present in California.

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" (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 et seq. of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, 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" divided by a 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 et seq. of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in a Food. Certain exposures to chemicals that occur in foods naturally (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges 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 listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, 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" level for chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that 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. ~~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. The notice must comply with the information and procedural requirements specified in Section 25903 of the regulations and in Title 11, sections 3100-3103. A private party may not pursue an independent enforcement action 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 to stop committing the violation.

#### FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at [P65Public.Comments@oehha.ca.gov](mailto:P65Public.Comments@oehha.ca.gov).

Revised: July, 2012

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

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<sup>2</sup> See Section 25501(a)(4)

Exhibit B

### CARCINOGENS

Tobacco smoke	Acetaldehyde
Acetamide	Acrolein
Acrylonitrile	4-Aminobiphenyl
Aniline	o-Anisidine
Benz[a]anthracene	Benzene
Benzo[b]fluoranthene	Benzo[j]fluoranthene
Benzo[k]fluoranthene	Benzo[a]pyrene
1,3-Butadiene	Captan
Carbon disulfide	Carbon monoxide
Chrysene	DDT
Dibenz[a,h]acridine	Dibenz[a,j]acridine
Dibenz[a,h]anthracene	7H-Dibenzof[c,g]carbazole
Dibenzo[a,e]pyrene	Dibenzo[a,h]pyrene
Dibenzo[a,i]pyrene	Dibenzo[a,l]pyrene
1,1-Dimethylhydrazine	1-Naphthylamine
2-Naphthylamine	Nicotine
2-Nitropropane	N-Nitrosodi-n-butylamine
N-Nitrosodiethanolamine	N-Nitrosodiethylamine
N-Nitroso-n-methylethylamine	N'-Nitrosornicotine
N-Nitrosopiperidine	N-Nitrosopyrrolidine
Styrene	Toluene
2-Toluidine	Urethane
Vinyl chloride	Arsenic
Cadmium	Chromium
Lead	Nickel

### REPRODUCTIVE TOXINS

Arsenic (inorganic oxides)	Cadmium
Carbon disulfide	Carbon monoxide
Lead	Nicotine
Toluene	Tobacco Smoke
Urethane	

Exhibit C

# LIST OF VIOLATORS EXHIBIT C

Owner/CEO/President  
420 Smoke Shop  
428 East Santa Clara St  
San Jose, CA 95113

Owner/CEO/President  
Blunts Smoke Shop  
1814 Hillsdale Ave. Suite #A  
San Jose, CA 95124

Owner/CEO/President  
Bulldog Lifestyles  
291 South Capitol Avenue  
San Jose, CA 95127

Owner/CEO/President  
Bulldog Lifestyles  
1166 Tully Road  
San Jose, CA 95122

Owner/CEO/President  
Buzz Smoke Shop  
4155 Hamilton Avenue  
San Jose, CA 95130

Owner/CEO/President  
Monsters Of Rock  
1189 South De Anza Blvd  
San Jose, CA 95129

Owner/CEO/President  
Paramount Imports  
455 Meridian Avenue  
San Jose, CA 95126

Owner/CEO/President  
Smoke Shop  
3269 Stevens Creek Boulevard  
San Jose, CA 95117

Owner/CEO/President  
Smoker's Paradise  
3623 Union Ave  
San Jose, CA 95124

Owner/CEO/President  
Up In Smoke  
1711 Branham Ln  
San Jose, CA 95118

Owner/CEO/President  
Broham Art & Tobacco  
4731 Freeport Blvd  
Sacramento, CA 95822

Owner/CEO/President  
Hot Spots  
5800 Madison Avenue  
Sacramento, CA 95841

Owner/CEO/President  
Midtown Specialties  
2020 29th Street  
Sacramento, CA 95817

Owner/CEO/President  
Mac's Smoke Shop  
534 Emerson Street  
Palo Alto, CA 94301

Owner/CEO/President  
The Outer Limits  
2554 Cottage Way  
Sacramento, CA 95825

Owner/CEO/President  
Twisted Smoke Shop  
3718 J Street  
Sacramento, CA 95816

Owner/CEO/President  
Twisted Smoke Shop  
1120 Fulton Avenue  
Sacramento, CA 95825

Owner/CEO/President  
Wild Zone  
8710 La Riviera Drive  
Sacramento, CA 95826

Owner/CEO/President  
Freeport Cigarette  
5171 Freeport Blvd  
Sacramento, CA 95822