

60-DAY NOTICE OF VIOLATION

SENT IN COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE § 25249.7(d)

Date: March 8, 2014

To:

VIOLATORS	PUBLIC AGENCIES
Current CEO or President Commonwealth Toy & Novelty Co., Inc. 41 West 25 th Street New York, NY 10010	California's Attorney General's Office
Ernie Herman, President The TJX Companies, Inc. 770 Cochituate Road Framingham, MA 01701	District Attorney's Office for the 58 Counties of California
Current CEO or President Rovio Entertainment Ltd. 1702 Olympic Blvd Santa Monica, CA 90404 Copy sent also by fax to: 358 207 888 333	City Attorneys for San Francisco, San Diego, San Jose, Sacramento, and Los Angeles

From: Laleh Martin

Re: **60-Day Notice of Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65)**

Dear Sir/Madam:

Acting in the interest of the general public, Laleh Martin (hereinafter "Noticing Party") hereby provides notice pursuant to California Health & Safety Code section 25249.7(d) of violations of California Health & Safety Code section 25249.6, *et seq.* ("Proposition 65"). Ms. Martin's purpose in bringing this enforcement action is to reduce exposure to toxic chemicals in California. Violations are suspected to be occurring throughout the State of California, pursuant to 27 California Code of Regulations § 25903(c)(3), so notice is being sent to the district attorney for each of the 58 counties in California. Further, the Noticing Party provides this notice to the California Attorney General and the city attorneys for the cities of Los Angeles, San Diego, San Francisco, and San Jose.

Pursuant to 27 California Code of Regulations § 25903(b)(1), attached for Violators (the companies listed above) is a copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary," which is a summary of Proposition 65 prepared by the Office of Environmental Health Hazard Assessment ("OEHHA") of the California Environmental Protection Agency. OEHHA's Proposition 65 Implementation Office may be

reached at (916) 445-6900, and the agency posts information about Proposition 65 at:
<http://oehha.ca.gov/prop65.html>.

Description of Violation

Exposure:	Consumer and Occupational
Listed Chemical:	Tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”)
Routes of Exposure:	Ingestion, Dermal, Inhalation
Type of Harm:	Cancer
Included Products:	Children’s foam-filled stuffed toys
Example of Products:¹	Angry Birds (#91808; UPC No. 0-22286-91811-4)
Violators:	Commonwealth Toy & Novelty Co., Inc.; The TJX Companies, Inc.; Rovio Entertainment Ltd.
Relevant Period:	From March 19, 2013 until present

Violators have contravened the warning requirement at section 25249.6 of the California Health & Safety Code, which provides, “[no] 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.” Violators have manufactured, distributed, marketed, and/or sold Products containing TDCPP without the warnings required by Proposition 65, dating at least as far back as March 19, 2013, and continuing each day through the present. Without proper warnings, California citizens lack the information necessary to make informed decisions to avoid occupational and consumer exposure to the Listed Chemical.

The Products containing TDCPP are distributed and/or manufactured by Commonwealth Toy & Novelty Co., Inc. and Rovio Entertainment Ltd., and sold by retailer T.J. Maxx in Los Angeles County California and elsewhere in California in transactions including over-the-counter, business-to-business, and by internet purchase.

TDCPP is a phosphorus-containing additive flame retardant chemical known to the State of California to cause cancer. Exposure to consumers – including infants, toddlers, and children – has occurred through the act of acquiring, using, and playing with the Products. The Products are designed and specifically marketed for direct contact with children during play. Individuals ingest TDCPP when they touch and handle the Product through direct dermal contact and absorption. Babies have heightened exposures because they ingest TDCPP following hand-to-mouth and object-to-mouth activities that they routinely engage in. Children are especially vulnerable to health effects related to TDCPP exposure due to rapid development of organs and systems that may be highly sensitive to environmental insults. All consumers and household members are further exposed to TDCPP by dermal contact, inhalation, and ingestion that occurs when toxic particles are released from the Products and accumulate in dust, indoor air, and food and water.

Occupational exposures also occur in violation of Proposition 65 when employees of the Violators handle the Products in the course of packaging, shipping, distributing, promoting, and

¹ This example is non-exclusive.

Notice of Violation
March 8, 2014

selling the Products without having first been given clear and reasonable warnings of the exposures to TDCPP. Accordingly, this notice alleges violations of Propositions 65 with respect to occupational exposures. *See* Cal. State Plan for Occupational Safety and Health, June 6, 1997.

Communications

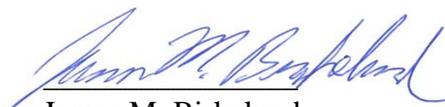
Please direct all communication related to this matter to James Birkelund, attorney for the Noticing Party, at:

Laleh Martin
c/o James Birkelund
Law Offices of James Birkelund
548 Market St., #11200
San Francisco, CA 94104
T: 415-602-6223; F: 415-789-4556
Email: james@birkelundlaw.com

Resolution

To correct the violation occasioned by the failure to warn all consumers of the exposure to TDCPP, the Noticing Party intends to file a citizen enforcement action against the Violators at the expiration of the 60-day notice period initiated by this letter and required by law before a suit is filed. Cal. Health & Safety Code § 252549.7(d)(1). Consistent with the public interest mission of this notice letter and to expeditiously rectify these ongoing violations of California law, the Noticing Party is open to constructively resolving the violations with a binding written agreement and short of filing suit. This would avoid both unwarned consumer and occupational exposures to TDCPP and the expense and time of litigation.

Sincerely,



James M. Birkelund

Enclosures: Certificate of Merit
Certificate of Service
OEHHA Summary of Proposition 65 (to Violators only)
Supporting Information for Certificate of Merit (to Attorney General only)

CERTIFICATE OF MERIT

California Health & Safety Code § 25249.7(d)

I, James Birkelund, hereby declare:

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

2. I am an attorney for the noticing party(ies).

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 alleged 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 plaintiff's 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 section 25249.7(h), *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.

March 8, 2014


James Birkelund

Enclosure (Attorney General copy only)

PROOF OF SERVICE

I, the undersigned, am over the age of 18 years and not a party to this case. I am a resident of or employed in the county where the mailing occurred and my business address is: 1123 Lincoln Ave., Apt. 1, Santa Monica, CA 90403.

On the date shown below, I served the following documents:

NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.6, et seq.

CERTIFICATE OF MERIT

“THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY” (served only on alleged violators)

CERTIFICATE OF MERIT ATTACHMENTS (served only on Attorney General)

(1) on the entities listed below via First Class Certified Mail, Receipt Requested, through the United States Postal Service by placing a true and correct copy in a sealed envelope, addressed to the entities listed below and providing each envelope to a United States Postal Service Representative:

Current CEO or President Commonwealth Toy & Novelty Co., Inc. 41 West 25 th Street New York, NY 10010	Ernie Herman, President The TJX Companies, Inc. 770 Cochituate Road Framingham, MA 01701	Current CEO or President Rovio Entertainment Ltd. 1702 Olympic Blvd Santa Monica, CA 90404 Copy sent also by fax to: 358 207 888 333
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(2) electronically to the entities listed in **Exhibit A: Electronic Service List**; and (3) by placing the documents above in a sealed envelope with postage fully prepaid, and by placing the envelope in the U.S. Mail on this same day in the ordinary course of business, addressed as set forth in **Exhibit B: United States Postal Service List**.

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

Date: March 8, 2014

By: 
James Birkelund

Exhibit A: Electronic Service List

Lon Wixson Deputy District Attorney CONTRA COSTA COUNTY lwixson@contracostada.org	Stephan R. Passalacqua District Attorney SONOMA COUNTY jbarnes@sonoma-county.org
Dije Ndreau Deputy District Attorney MONTEREY COUNTY Prop65DA@co.monterey.ca.us	Birgit Fladager District Attorney STANLISLAUS COUNTY Prop65@standa.org
Gary Liebertstein District Attorney NAPA COUNTY CEPD@countyofnapa.org	Philip J. Cline District Attorney TULARE COUNTY Prop65@co.tulare.ca.us
Paul E. Zellerbach District Attorney RIVERSIDE COUNTY Prop65@rivcoda.org	Gregory D. Totten District Attorney VENTURA COUNTY daspecialops@ventura.org
Karyn Sinunu-Towery Assistant District Attorney SANTA CLARA COUNTY epu@da.sccgove.org	

Exhibit B: United States Postal Service List

<p>The Honorable Nancy O'Malley District Attorney ALAMEDA COUNTY 1225 Fallon Street, Room 900 Oakland, CA 94612</p>	<p>The Honorable Terese Drabec District Attorney ALPINE COUNTY P.O. Box 248 Markleeville, CA 96120</p>
<p>The Honorable Todd Riebe District Attorney AMADOR COUNTY 708 Court Street, #202 Jackson, CA 95642</p>	<p>The Honorable Michael Ramsey District Attorney BUTTE COUNTY 25 County Center Drive, Administration Building Oroville, CA 95965</p>
<p>The Honorable Barbara Yook District Attorney CALAVERAS COUNTY 891 Mountain Ranch Road San Andreas, CA 95249</p>	<p>The Honorable John Poyner District Attorney COLUSA COUNTY 346 5th Street, Suite 101 Colusa, CA 95932</p>
<p>The Honorable Vernon Pierson District Attorney EL DORADO COUNTY 515 Main Street Placerville, CA 95667</p>	<p>Katherine Micks Acting District Attorney DEL NORTE COUNTY 450 H Street, Room 171 Crescent City, CA 95531</p>
<p>The Honorable Robert Maloney District Attorney GLENN COUNTY P.O. Box 430 Willows, CA 95988</p>	<p>The Honorable Elizabeth Egan District Attorney FRESNO COUNTY 2220 Tulare Street, Suite 1000 Fresno, CA 93721</p>
<p>The Honorable Gilbert G. Otero District Attorney IMPERIAL COUNTY 940 West Main Street, Suite 102 El Centro, CA 92243</p>	<p>The Honorable Paul Gallegos District Attorney HUMBOLDT COUNTY 825 5th Street Eureka, CA 95501</p>
<p>The Honorable Lisa Green District Attorney KERN COUNTY 1215 Truxtun Avenue Bakersfield, CA 93301</p>	<p>The Honorable Thomas L. Hardy District Attorney INYO COUNTY 168 North Edwards Independence, CA 93526</p>
<p>The Honorable Donald Anderson District Attorney LAKE COUNTY 255 N. Forbes Street Lakeport, CA 95453</p>	<p>The Honorable Greg Strickland District Attorney KINGS COUNTY 1400 West Lacey Blvd. Hanford, CA 93230</p>

Notice of Violation
March 8, 2014

The Honorable Jackie Lacey District Attorney LOS ANGELES COUNTY 210 W. Temple Street Los Angeles, CA 90012	The Honorable Robert Burns District Attorney LASSEN COUNTY 220 S. Lassen Street, Suite 8 Susanville, CA 96130
The Honorable Edward Berberian District Attorney MARIN COUNTY 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	The Honorable Michael Keitz District Attorney MADERA COUNTY 209 West Yosemite Avenue Madera, CA 93637
The Honorable C. David Eyster District Attorney MENDOCINO COUNTY P.O. Box 1000 Ukiah, CA 95482	The Honorable Tom Cooke District Attorney MARIPOSA COUNTY P.O. Box 730 Mariposa, CA 95338
The Honorable Jordan Funk District Attorney MODOC COUNTY 204 S. Court Street Room 202 Alturas, CA 96101	The Honorable Larry Morse II District Attorney MERCED COUNTY 550 West Main Street Merced, CA 95340
The Honorable Clifford Newell Office of the District Attorney NEVADA COUNTY 201 Commercial Street Nevada City, CA 95959	The Honorable Tim Kendall District Attorney MONO COUNTY P.O. Box 2053 Mammoth Lakes, CA 93546
The Honorable R. Scott Owens District Attorney PLACER COUNTY 10810 Justice Center Drive Roseville, CA 95678	The Honorable Tony Rackauckas District Attorney ORANGE COUNTY 401 Civic Center Drive West Santa Ana, CA 92701
The Honorable Candice Hooper-Mancino District Attorney SAN BENITO COUNTY 419 4th Street Hollister, CA 95023	The Honorable David Hollister District Attorney PLUMAS COUNTY 520 Main Street, Room 404 Quincy, CA 95971
The Honorable Bonnie Dumanis District Attorney SAN DIEGO COUNTY 330 W. Broadway, Suite 1300 San Diego, CA 92101	The Honorable Jan Scully District Attorney SACRAMENTO COUNTY 901 G Street Sacramento, CA 95812

Notice of Violation
March 8, 2014

<p>The Honorable James Willett District Attorney SAN JOAQUIN COUNTY P.O. Box 990 Stockton, CA 95202</p>	<p>The Honorable Michael Ramos District Attorney SAN BERNARDINO COUNTY 303 W. Third Street San Bernardino, CA 92415</p>
<p>The Honorable Stephen Wagstaffe District Attorney SAN MATEO COUNTY 400 County Center, Third Floor Redwood City, CA 94063</p>	<p>The Honorable George Gascon District Attorney SAN FRANCISCO COUNTY 880 Bryant Street, Third Floor San Francisco, CA 94103</p>
<p>The Honorable Stephen Carlton District Attorney SHASTA COUNTY 1355 West Street Redding, CA 96001</p>	<p>The Honorable Gerald Shea District Attorney SAN LUIS OBISPO COUNTY Courthouse Annex, 4th Floor San Luis Obispo, CA 93408</p>
<p>The Honorable James Kirk Andrus District Attorney SISKIYOU COUNTY P.O. Box 986 Yreka, CA 96097</p>	<p>The Honorable Joyce Dudley District Attorney SANTA BARBARA COUNTY 1112 Santa Barbara Street Santa Barbara, CA 93101</p>
<p>Assistant District Attorney Jana D. McClung Acting District Attorney SUTTER COUNTY 446 Second Street, Suite 102 Yuba City, CA 95991</p>	<p>The Honorable Bob Lee District Attorney SANTA CRUZ COUNTY 701 Ocean Street, Room 200 Santa Cruz, CA 95060</p>
<p>The Honorable Michael Harper District Attorney TRINITY COUNTY P.O. Box 310 Weaverville, CA 96093</p>	<p>The Honorable Lawrence Allen District Attorney SIERRA COUNTY 100 Courthouse Square Downieville, CA 95936</p>
<p>The Honorable Michael Knowles District Attorney TUOLUMNE COUNTY 423 No. Washington Street Sonora, CA 95370</p>	<p>The Honorable Donald du Bain District Attorney SOLANO COUNTY 675 Texas Street, Suite 4500 Fairfield, CA 94533</p>
<p>The Honorable Jeffery Reisig District Attorney YOLO COUNTY 301 Second Street Woodland, CA 95695</p>	<p>The Honorable Gregg Cohen District Attorney TEHAMA COUNTY P.O. Box 519 Red Bluff, CA 96080</p>

Notice of Violation
March 8, 2014

	<p>The Honorable Patrick McGrath District Attorney YUBA COUNTY 215 Fifth Street, Suite 152 Marysville, CA 95901</p>
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AMENDED PROOF OF SERVICE

I, the undersigned, am over the age of 18 years and not a party to this case. I am a resident of or employed in the county where the mailing occurred and my business address is: 1123 Lincoln Ave., Apt. 1, Santa Monica, CA 90403.

On the date shown below, I served the following documents:

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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: March 8, 2014

By: 
James Birkelund