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April 29, 2015

Owner/President/CEO BestPoolBuys.com 156 Lawrence Paquette Drive Champlain, NY 12919	President/CEO Aqua-Magic, Inc. c/o B Jill Atchley 149 Grayson Street Portsmouth, VA 23707
President/CEO Aqua Magic Pool and Spa, Inc. 3070 Racetrack View Drive Del Mar, CA 92014	Andrew Scott Fine Aqua Magic Pool and Spa, Inc. 317 Bishop Drive San Marcos, CA 92078
Edward S. Lampert, CEO Or Current President/CEO Sears Holdings Management Corporation c/o The Corporation Trust Company Corporation trust Center 1209 Orange Street Wilmington, DE 19801	Edward S. Lampert, CEO Or Current President/CEO Sears Holdings Management Corporation c/o CT Corporation System 818 West Seventh Street, 2 <sup>nd</sup> Floor Los Angeles, CA 90017
President/CEO Sears Holdings, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	President/CEO Sears Holdings Corporation c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801
President/CEO Sears Corporation c/o Corporation Service Company 2711 Centerville Road, Suite 400 Wilmington, DE 19808	

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

Re: Notice of Violation of California Health & Safety Code §25249.5, *et seq.*

To Whom It May Concern:

Brodsky & Smith, LLC ("Brodsky Smith") represents Anthony Ferreiro ("Ferreiro"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals in products sold in California and to improve human health by reducing hazardous substances contained in such items.

With respect to the product identified below, Mr. Ferreiro has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at Cal. Health & Safety Code §25249.5, *et seq.* This violation has occurred and continues to occur because the alleged Violator(s) identified below failed to provide required clear and reasonable warnings with this product. Section 25249.6 of the statute provides 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 providing a clear and reasonable warning to such individual ..." Without proper warnings regarding the toxic effects of exposures to this listed chemical that results from contact with this product, California citizens lack the information necessary to make an informed decision on whether and/or how to eliminate (or reduce) their risk of exposure to the listed chemical from the reasonably foreseeable use of the product.

Please allow this letter to serve as notice of this violation to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, Brodsky Smith intends to file a private enforcement action on behalf of Mr. Ferreiro sixty (60) days after effective service of this notice unless the public enforcement agencies<sup>1</sup> have commenced and are earnestly prosecuting an action to redress these violations.

**Alleged Violator(s):** The name of the company's covered by this notice that Violated Proposition 65 (hereinafter "the Violators") are:

BestPoolBuys.com  
 Aqua Magic Pool & Spa, Inc.  
 Aqua Magic, Inc.  
 Sears Corporation  
 Sears Holdings Corporation  
 Sears Holdings, Inc.  
 Sears Holdings Management Corporation

**Consumer Product:** The product that is the subject of this notice and the chemicals in this product identified as exceeding allowable levels are:

<i>Product</i>	<i>Retailer(s)</i>	<i>Manufacturer(s)/Distributor(s)</i>
Deluxe Weighted Spa Booster Seat UPC# 6 72875 70045 5 NP532	Sears BestPoolBuys.com	BestPoolBuys.com Aqua Magic, Inc. Aqua Magic Pool & Spa, Inc.

**Listed Chemicals:** This violation involves exposure to the chemical Diisononyl phthalate (DINP). On December 20, 2013, the State of California listed Diisononyl phthalate (DINP) as a chemical known to cause cancer.

**Violations:** The alleged Violators knowingly and intentionally have exposed and continue to knowingly and intentionally expose consumers within the State of California to Diisononyl phthalate (DINP) at levels that, upon reasonable use of the product, exceed the No Significant Risk Level without providing clear and reasonable warning of this exposure. In particular, the product does not warn that it contains chemicals known to the State of California to cause reproductive toxicity for the developmental endpoints.

**Route of Exposure:** The exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of the product. Consequently, the primary route of exposure to these chemicals is through dermal exposure through direct contact with the Deluxe Weighted Spa Booster Seat, dermal absorption of pool or spa water containing DINP that has leached from the Deluxe Weighted Spa Booster Seat, and ingestion of water containing DINP. Skin exposure through the

<sup>1</sup> The public enforcement agencies that have been served with copies of this notice of violations are identified in the attached distribution list accompanying the Certificate of Service.

user's hands or other areas of direct contact with the user's bare skin is likely to occur when the user manipulates or sits on the Deluxe Weighted Spa Booster Seat. Another route of dermal exposure is through DINP that has leached into the pool or spa water from the Deluxe Weighted Spa Booster Seat. This water containing DINP can be absorbed through the entire surface area of the user's body. Finally, while direct mouthing of the product does not seem likely, indirect exposure can occur if pool or spa water containing DINP is ingested.

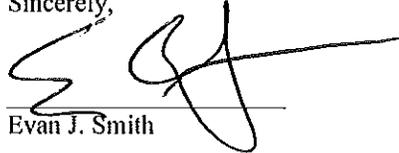
**Duration of the Violations:** Each of these ongoing violations has occurred on every day since at least March 16, 2015; as well as every day since the product was introduced to the California marketplace and following the one-year anniversary date of the listing at issue; and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is removed from the product.

Pursuant to Title 11, C.C.R. §3100, a certificate of merit is attached hereto. Pursuant to Title 27, C.C.R. §25903(b), a copy of "The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary" is also enclosed.

Consistent with the public interest goals of Proposition 65 and desire to have these ongoing violations of California law quickly rectified, Mr. Ferreiro is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation.

Mr. Ferreiro has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



Evan J. Smith

**Attachments**

Certificate of Merit

Certificate of Service

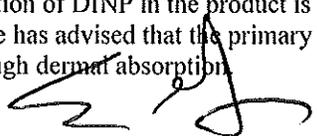
The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary

**CERTIFICATE OF MERIT**  
Health & Safety Code Section 25249.7(d)

I, Evan J. Smith, hereby declare:

- (1) This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice have violated Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
- (2) I am the attorney for the noticing party, Anthony Ferreiro.
- (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 chemicals that are the subject of the action.
- (4) Based on the information obtained through these 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 private action" means that the information provides a credible basis that all elements of plaintiff's case can be established and the information did not prove that the alleged violator(s) will be able to establish any of the affirmative defenses set forth in the statute.
- (5) We have had the product tested by Microbac Laboratories and have found that the DINP content contained in the product exceeds allowable levels of DINP pursuant to the statute. With respect to the Deluxe Weighted Spa Booster Seat, UPC#6 72875 700455; NP532 testing by Microbac Laboratories demonstrated the presence of DINP in the Deluxe Weighted Spa Booster Seat at a concentration of 30,800 parts per million (ppm). In addition, we have also consulted with Dr. Anthony Lagalante, Ph.D. of Main Line Environmental, LLC, who has advised that the concentration of DINP in the product is known to be and can be harmful to people. Mr. Lagalante has advised that the primary route of exposure of the chemicals in this product is through dermal absorption.

Dated: April 29, 2015

  
\_\_\_\_\_  
Evan J. Smith  
Attorney for Anthony Ferreiro

**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 of age, and am not a party to the within action. My business address is 2 Bala Plaza, Suite 510, Bala Cynwyd, Pennsylvania. I am employed in Montgomery County where the mailing occurred.

On April 29, 2015, 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 Action of 1986 (Proposition 65): A Summary** on the following entities and individuals listed below by placing a true and correct copy thereof in a sealed envelope, addressed to the person or entity listed below and depositing it in a US Postal Service Office with postage fully prepaid for delivery by Certified Mail:

Owner/President/CEO BestPoolBuys.com 156 Lawrence Paquette Drive Champlain, NY 12919	President/CEO Aqua-Magic, Inc. c/o B Jill Atchley 149 Grayson Street Portsmouth, VA 23707
President/CEO Aqua Magic Pool and Spa, Inc. 3070 Racetrack View Drive Del Mar, CA 92014	Andrew Scott Fine Aqua Magic Pool and Spa, Inc. 317 Bishop Drive San Marcos, CA 92078
Edward S. Lampert, CEO Or Current President/CEO Sears Holdings Management Corporation The Corporation Trust Company Corporation trust Center 1209 Orange Street Wilmington, DE 19801	President/CEO Sears Holdings Corporation c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801
Edward S. Lampert, CEO Or Current President/CEO Sears Holdings Management Corporation c/o CT Corporation System 818 West Seventh Street, 2 <sup>nd</sup> Floor Los Angeles, CA 90017	President/CEO Sears Corporation c/o Corporation Service Company 2711 Centerville Road, Suite 400 Wilmington, DE 19808
President/CEO Sears Holdings, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19808	

On April 29, 2015, 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 Action of 1986 (Proposition 65): A Summary** on each of the individuals on the service list attached hereto as Appendix B by placing a true and correct copy thereof in a sealed envelope, addressed to the person or entity listed below and depositing it in a US Postal Service Office with postage fully prepaid for delivery by Priority Mail.

Executed on April 29, 2015, in Bala Cynwyd, Pennsylvania.

  
\_\_\_\_\_  
Evan J. Smith

## SERVICE LIST

The Honorable Tom Hardy, District Attorney  
INYO COUNTY  
PO Box D  
Independence, CA 93526

The Honorable Terese Drabec, District Attorney  
ALPINE COUNTY  
270 Laramie Street, P.O. Box 248  
Markleeville, CA 96120

The Honorable Birgit Fladager, District Attorney  
STANISLAUS COUNTY  
832 12th Street, Suite 300  
Modesto, CA 95354

The Honorable Bob Lee, District Attorney  
SANTA CRUZ COUNTY  
701 Ocean Street, Room 200  
Santa Cruz, CA 95060

The Honorable Bonnie Dumanis, District Attorney  
SAN DIEGO COUNTY  
330 West Broadway, Suite 1300  
San Diego, CA 92101

The Honorable Ronald Scott Owens, District Atty.  
PLACER COUNTY  
10810 Justice Center Drive, Suite #240  
Roseville, CA 95678

The Honorable Candice Hooper-Mancino,  
District Attorney  
SAN BENITO COUNTY  
419 4th Street  
Hollister, CA 95023-3801

The Honorable Carl Adams, District Attorney  
SUTTER COUNTY  
446 2nd Street  
Yuba City, CA 95991

The Honorable Joyce E. Dudley, District Attorney  
SANTA BARBARA COUNTY  
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Santa Barbara, CA 93101

The Honorable Clifford Newell, District Attorney  
NEVADA COUNTY  
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Nevada City, CA 95959

The Honorable Donald A. du Bain, District Atty.  
SOLANO COUNTY  
675 Texas Street, Suite 4500  
Fairfield, CA 94533

The Honorable Dean Flippo, District Attorney  
MONTEREY COUNTY  
P.O. Box 1131  
Salinas, CA 93902

The Honorable Dennis J. Herrera, Office of the  
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SAN FRANCISCO COUNTY  
City Hall, Room 234,  
1 Dr. Carlton B. Godlett Place  
San Francisco, CA 94102

The Honorable Jeffrey F. Rosen, District Attorney  
SANTA CLARA COUNTY  
70 West Hedding Street, West Wing  
San Jose, CA 95110

The Honorable Michael Knowles, Acting  
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423 North Washington Street  
Sonora, CA 95370

The Honorable Edward Berberian, District Attorney  
MARIN COUNTY  
3501 Civic Center Drive, Room 130  
San Rafael, CA 94903

The Honorable Lisa Green, District Attorney  
KERN COUNTY  
1215 Truxtun Avenue, Fourth Floor  
Bakersfield, CA 93301

The Honorable Elizabeth Egan, District Attorney  
FRESNO COUNTY  
2220 Tulare Street, Suite 1000  
Fresno, CA 93721

The Honorable Michael R. Keitz, District Attorney  
MADERA COUNTY  
209 West Yosemite Avenue  
Madera, CA 93637

The Honorable Gary Lieberstein, District Attorney  
NAPA COUNTY  
P.O. Box 720  
Napa, CA 94559

The Honorable Jordan Funk, Interim Dist. Atty.  
MODOC COUNTY  
204 South Court Street, Room 202  
Alturas, CA 96101

The Honorable Tim Kendall, District Attorney  
MONO COUNTY  
P.O. Box 2053  
Mammoth Lakes, CA 93546

The Honorable Stephen Carlton, District Attorney  
SHASTA COUNTY  
1355 West Street  
Redding, CA 96001

The Honorable Gerald Shea, District Attorney  
SAN LUIS OBISPO COUNTY  
1035 Palm Street  
San Luis Obispo, CA 93408

The Honorable Gilbert Otero, District Attorney  
IMPERIAL COUNTY  
940 West Main Street, Suite 102  
El Centro, CA 92243

The Honorable Gregg Cohen, District Attorney  
TEHAMA COUNTY  
444 Oak Street, Room L  
Red Bluff, CA 96080

The Honorable Gregory Totten, District Attorney  
VENTURA COUNTY  
800 South Victoria Avenue, Suite 314  
Ventura, CA 93009

The Honorable Stephen M. Wagstaffe, District Atty.  
SAN MATEO COUNTY  
400 County Center, Third Floor  
Redwood City, CA 94063

The Honorable James Kirk Andrus, District Atty.  
SISKIYOU COUNTY  
P.O. BOX 986  
Yreka, CA 96097

The Honorable James Willett, District Attorney  
SAN JOAQUIN COUNTY  
P.O. BOX 990  
Stockton, CA 95202

The Honorable Jan Goldsmith, Office of the  
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SAN DIEGO  
1200 Third Ave., Suite 1620  
San Diego, CA 92101

The Honorable Jan Scully, District Attorney  
SACRAMENTO COUNTY  
901 G Street  
Sacramento, CA 95814

The Honorable David Hollister, District Attorney  
PLUMAS COUNTY  
520 Main Street, Room 404  
Quincy, CA 95971

The Honorable Jeff Reisig, District Attorney  
YOLO COUNTY  
301 Second Street  
Woodland, CA 95695

The Honorable Barbara Yook, District Attorney  
CALAVERAS COUNTY  
891 Mountain Ranch Road  
San Andreas, CA 95249

The Honorable John Poyner, District Attorney  
COLUSA COUNTY  
346 Fifth Street, Suite 101  
Colusa, CA 95932

The Honorable Donald Anderson, District Attorney  
LAKE COUNTY  
255 North Forbes Street  
Lakeport, CA 95453

The Honorable George Gascon, District Attorney  
SAN FRANCISCO COUNTY  
850 Bryant Street, Room 325  
San Francisco, CA 94103

The Honorable Larry Morse II, District Attorney  
MERCED COUNTY  
550 West Main Street  
Merced, CA 95340

The Honorable Lawrence Allen, District Attorney  
SIERRA COUNTY  
100 Courthouse Square, Second Floor - PO Box 457  
Downieville, CA 95936

The Honorable C. David Eyster, District Attorney  
MENDOCINO COUNTY  
P.O. Box 1000  
Ukiah, CA 95482

The Honorable Michael Harper, District Attorney  
TRINITY COUNTY  
P.O. Box 310  
Weaverville, CA 96093

The Honorable Michael Ramos, District Attorney  
SAN BERNARDINO COUNTY  
303 West Third Street, 6th Floor  
San Bernardino, CA 92415

The Honorable Michael Ramsey, District Attorney  
BUTTE COUNTY  
25 County Center Drive, Administration Building  
Oroville, CA 95965

The Honorable Jon Alexander, District Attorney  
DEL NORTE COUNTY  
450 H Street, Room 171  
Crescent City, CA 95531

The Honorable Patrick McGrath, District Attorney  
YUBA COUNTY  
215 Fifth Street, Suite 152  
Marysville, CA 95901

The Honorable Paul Gallegos, District Attorney  
HUMBOLDT COUNTY  
825 5th Street, 4th Floor  
Eureka, CA 95501

The Honorable Tim Ward, District Attorney  
TULARE COUNTY  
221 South Mooney Blvd., Suite 224  
Visalia, CA 93291

The Honorable Richard Doyle, Office of the  
City Attorney  
City of San Jose  
200 East Santa Clara Street, 16th Floor  
San Jose, CA 95113-1905

The Honorable Thomas K. Cooke, District Attorney  
MARIPOSA COUNTY  
5101 Jones Street, P.O. Box 730  
Mariposa, CA 95338

The Honorable Robert Burns, District Attorney  
LASSEN COUNTY  
220 South Lassen Street, Suite 8  
Susanville, CA 96130

The Honorable Robert J. Maloney, District Attorney  
GLENN COUNTY  
P.O. Box 430  
Willows, CA 95988

The Honorable Mark A. Peterson, District Attorney  
CONTRA COSTA COUNTY  
900 Ward Street  
Martinez, CA 94553

The Honorable Mike Feuer, City Attorney  
City of Los Angeles  
800 City Hall East, 200 N. Main Street  
Los Angeles, CA 90012

The Honorable Paul Zellerbach, District Attorney  
RIVERSIDE COUNTY  
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Riverside, CA 92501

The Honorable Greg Strickland, District Attorney  
KINGS COUNTY  
1400 West Lacey Blvd.  
Hanford, CA 93230

The Honorable Jill Ravitch, District Attorney  
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Santa Rosa, CA 95403

The Honorable Jackie Lacey, District Atty's Office  
LOS ANGELES COUNTY  
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Los Angeles, CA 90012-3210

The Honorable Nancy O'Malley, District Attorney  
ALAMEDA COUNTY  
1225 Fallon Street, Room 900  
Oakland, CA 94612

The Honorable Todd Riebe, District Attorney  
AMADOR COUNTY  
708 Court Street #202  
Jackson, CA 95642

The Honorable Tony Rackauckas, District Attorney  
ORANGE COUNTY  
401 Civic Center Drive West  
Santa Ana, CA 92701

The Honorable Vernon Pierson, District Attorney  
EL DORADO COUNTY  
515 Main Street  
Placerville, CA 95667

## 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. Please refer to ~~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.

The text of 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 "Proposition 65 Governor's List." ~~Under Proposition 65,~~ requires the lead agency (OEHHA) Governor to publish a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. ~~C~~This means that chemicals are

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<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>.

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 Proposition 65~~this law~~. Businesses that produce, use, release or otherwise engage in activities involving listed ~~these~~ 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 means that the warning must: (1) clearly ~~say~~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 to that chemical. 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 Periods.*** 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 full and part-time employees, not just those present in California.

***Exposures that pose no significant risk of cancer.*** For chemicals that are listed under Proposition 65 as known to the State to cause cancer (“carcinogens”), a warning is not required if the business causing the exposure 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 causing the exposure 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 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 naturally 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”

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

level for chemicals that cause reproductive toxicity, if an individual were exposed to that 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. 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 Title 27 the regulations and in Title 11, sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement 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.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties or any reimbursement for costs and attorney's fees, if the notice of violation was served on or after October 5, 2013, and the alleged violator has done *all* of the following within 14 days of being served notice:

- Corrected the alleged violation;
- Agreed to pay a civil penalty of \$500 (subject to change as noted below) to the private party within 30 days; and
- Notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private-party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city greater than 750,000 in population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private-party.

A copy of the notice of special compliance procedure and proof of compliance form is included with this notice and can be downloaded from OEHHA's website at: <http://oehha.ca.gov/prop65/law/p65law72003.html>. The notice is reproduced here:

Date: \_\_\_\_\_

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Name of Noticing Party or attorney for Noticing Party: \_\_\_\_\_

Address: \_\_\_\_\_

Phone number: \_\_\_\_\_

**SPECIAL COMPLIANCE PROCEDURE**

**PROOF OF COMPLIANCE**

You are receiving this form because the Noticing Party listed above has alleged that you are violating California Health and Safety Code §25249.6 (Prop. 65).

The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:

1. You have actually taken the corrective steps that you have certified in this form.
2. The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice.
3. The Noticing Party receives the required \$500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.
4. This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.

**PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY**

The alleged violation is for an exposure to: (check one)

Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.

A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination.

Environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises.

Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

**IMPORTANT NOTES:**

1. You have no potential liability under California Health and Safety Code §25249.6 if your business has nine (9) or fewer employees.
2. Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action

over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.

Date :

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Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

**PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE**

**Certification of Compliance**

Accurate completion of this form will demonstrate that you are now in compliance with California Health and Safety Code §25249.6 for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):

Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises;

Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately showing its placement on my premises; OR

Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

**Certification**

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

\_\_\_\_\_  
Signature of alleged violator or authorized representative    Date

\_\_\_\_\_  
Name and title of signatory

*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: May 2014

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.