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CALIFORNIA OFFICE
9595 WILSHIRE BLVD., SUITE 900
BEVERLY HILLS, CA 90212
877.534.2590

June 1, 2015

| | |
|---|--|
| Steven H. Temares, CEO Arthur Stark, President Or Current President/CEO Bed Bath & Beyond, Inc. c/o The Prentice-Hall Corporation System, Inc. 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833 | Steven H. Temares, CEO Arthur Stark, President Or Current President/CEO Bed Bath & Beyond, Inc. 650 Liberty Avenue Union, NJ 07083 |
| Michael Savage, CEO Donna Savage, President Fitness EM, LLC c/o Steve Sandler 320 7 th Street Huntington Beach, CA 92648 | Michael Savage, CEO Donna Savage, President Fitness EM, LLC a/k/a Fitness Equipment Manufacturing, LLC c/o Michael J. Savage 660 Douglas Street Uxbridge, MA 01569 |

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 Ema Bell ("Bell"), 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, Ms. Bell 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 Ms. Bell sixty (60) days after effective service of this notice unless the public enforcement agencies¹ 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:

Fitness EM, LLC
Fitness EM, LLC a/k/a Fitness Equipment Manufacturing, LLC
Bed Bath & Beyond, Inc.

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> |
|---|--------------------|--|
| Empower 3-IN-1 Core Ball Color: blue UPC# 8 31090 00197 0 MP-2686R | Bed Bath & Beyond | Fitness EM, LLC a/k/a Fitness Equipment Manufacturing, LLC |

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. This addition took place more than twelve (12) months before Ferreiro served this Notice.

This violation also involves exposure to the chemical Di-isodecyl phthalate (DIDP). On April 20, 2007 the State of California listed Di-isodecyl phthalate (DIDP) as a chemical known to cause reproductive toxicity.

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) 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 cancer.

The alleged Violators have also knowingly and intentionally exposed and continue to knowingly and intentionally expose consumers with the State of California to Di-isodecyl phthalate (DIDP) at levels that, upon reasonable use of the product, exceed the Maximum Allowable Dose Level without providing clear and reasonable warning of this exposure. In particular, the product does not warn that it contains a chemical known to the State to cause reproductive toxicity.

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 direct dermal exposure through contact between the exercise ball surface and the user's exposed skin during exercise or during handling of the exercise ball. Indirect dermal exposure can occur by transfer of DINP and DIDP to the user's clothing with subsequent dermal absorption. Should the user perspire during exercising with the product, phthalate skin permeation rates can potentially increase as aqueous phthalate skin permeation rates are faster than neat phthalate permeation. Finally, while mouthing of the product does not seem likely, some amount of exposure through ingestion can occur by handling the product with subsequent touching of the users hand to mouth.

¹ 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.

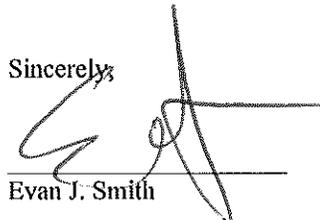
Duration of the Violations: Each of these ongoing violations has occurred on every day since at least March 26, 2015; as well as every day since the product was introduced to the California marketplace and following the one-year anniversary date of the listing at issue; and will continue every day until 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, Ms. Bell is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation.

Ms. Bell 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

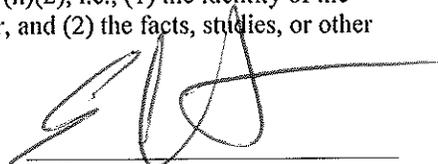
The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary

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, Ema Bell.
- (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 the plaintiffs' 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) 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 information identified in Health & 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 1, 2015



Evan J. Smith
Attorney for Ema Bell

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:

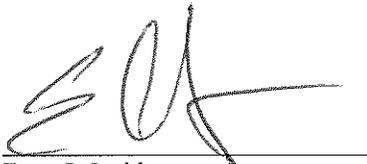
I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within action. My business address is 2 Bala Plaza, Suite 510, Bala Cynwyd, Pennsylvania. I am employed in Montgomery County where the mailing occurred.

On June 1, 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:

| | |
|---|--|
| Steven H. Temares, CEO Arthur Stark, President Or Current President/CEO Bed Bath & Beyond, Inc. c/o The Prentice-Hall Corporation System, Inc. 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833 | Steven H. Temares, CEO Arthur Stark, President Or Current President/CEO Bed Bath & Beyond, Inc. 650 Liberty Avenue Union, NJ 07083 |
| Michael Savage, CEO Donna Savage, President Fitness EM, LLC c/o Steve Sandler 320 7 th Street Huntington Beach, CA 92648 | Michael Savage, CEO Donna Savage, President Fitness EM, LLC a/k/a Fitness Equipment Manufacturing, LLC c/o Michael J. Savage 660 Douglas Street Uxbridge, MA 01569 |

On June 1, 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 June 1, 2015, in Bala Cynwyd, Pennsylvania.



Evan J. Smith

SERVICE LIST

- The Honorable Nancy O'Malley
Alameda County District Attorney
1225 Fallon Street, Room 900
Oakland, CA 94612
- The Honorable Terese Drabec
Alpine County District Attorney
270 Laramie Street, PO BOX 248
Markleeville, CA 96120
- The Honorable Todd Riebe
Amador County District Attorney
708 Court Street
Jackson, CA 95842
- The Honorable Michael Ramsey
Butte County District Attorney
25 County Center Drive
Oroville, CA 95965
- The Honorable Barbara Yook
Calaveras County District Attorney
891 Mountain Ranch Road
San Andreas, CA 95249
- The Honorable John Poyner
Colusa County District Attorney
346 Fifth Street
Colusa, CA 95932
- The Honorable Mark Peterson
Contra Costa County District Attorney
900 Ward Street
Martinez, CA 94553
- The Honorable Dale Trigg
Del Norte County District Attorney
450 H Street, Room 171
Crescent City, CA 95531
- The Honorable Vern Pierson
El Dorado County District Attorney
515 Main Street
Placerville, CA 95667
- The Honorable Lisa Smiltcamp
Fresno County District Attorney
2220 Tulare Street, #1000
Fresno, CA 93721
- The Honorable Dwayne Stewart
Glenn County District Attorney
P.O. Box 430
Willows, CA 95988
- The Honorable Maggie Fleming
Humboldt County District Attorney
825 5th Street, Fourth Floor
Eureka, CA 95501
- The Honorable Gilbert Otero
Imperial County District Attorney
940 West Main Street, Suite 102
El Centro, CA 92243
- The Honorable Thomas Hardy
Inyo County District Attorney
168 North Edwards Street
Independence, CA 93526
- The Honorable Lisa Green
Kern County District Attorney
1215 Truxtun Avenue
Bakersfield, CA 93301
- The Honorable Keith Fagundas
Kings County District Attorney
1400 West Lacey Boulevard
Hanford, CA 93230
- The Honorable Donald Anderson
Lake County District Attorney
255 North Forbes Street
Lakeport, CA 95453
- The Honorable Stacey Montgomery
Lassen County District Attorney
220 South Lassen Street, Ste. 8
Susanville, CA 96130
- The Honorable Jackie Lacey
Los Angeles County District Attorney
210 West Temple Street, Suite 18000
Los Angeles, CA 90012
- The Honorable David Linn
Madera County District Attorney
209 West Yosemite Avenue
Madera, CA 93637
- The Honorable Edward Berberian
Marin County District Attorney
3501 Civic Center Drive, Room 130
San Rafael, CA 94903
- The Honorable Thomas Cooke
Mariposa County District Attorney
5101 Jones Street, P.O. Box 730
Mariposa, CA 95338
- The Honorable C. David Eyster
Mendocino County District Attorney
100 North State Street, P.O. Box 1000
Ukiah, CA 95482
- The Honorable Larry Morse II
Merced County District Attorney
550 W. Main Street
Merced, CA 95340
- The Honorable Jordan Funk
Modoc County District Attorney
204 S. Court Street, Suite 202
Alturas, CA 96101
- The Honorable Tim Kendall
Mono County District Attorney
P.O. Box 617
Bridgeport, CA 93517
- The Honorable Dean Flippo
Monterey County District Attorney
P.O. Box 1131
Salinas, CA 93902
- The Honorable Gary Lieberstein
Napa County District Attorney
P.O. Box 720
Napa, CA 94559
- The Honorable Clifford Newell
Nevada County District Attorney
201 Commercial Street
Nevada City, CA 95959
- The Honorable Tony Rackauckas
Orange County District Attorney
401 Civic Center Drive West
Santa Ana, CA 92701
- The Honorable R. Scott Owens
Placer County District Attorney
10810 Justice Center Drive, Suite 240
Roseville, CA 95678
- The Honorable David Hollister
Plumas County District Attorney
520 Main Street, Room 404
Quincy, CA 95971
- The Honorable Michael Hestrin
Riverside County District Attorney
3960 Orange Street
Riverside, CA 92501
- The Honorable Anne Marie Schubert
Sacramento County District Attorney
901 G Street
Sacramento, CA 95814
- The Honorable Candice Hooper
San Benito County District Attorney
419 4th Street, Second Floor
Hollister, CA 95203
- The Honorable Michael Ramos
San Bernardino County District Attorney
303 West 3rd Street, 6th Floor
San Bernardino, CA 92415-0502
- The Honorable Bonnie Dumanls
San Diego County District Attorney
330 W. Broadway Street
San Diego, CA 92101
- The Honorable George Gascon
San Francisco County District Attorney
850 Bryant Street, Room 322
San Francisco, CA 94103
- The Honorable Tori Verber Salazar
San Joaquin County District Attorney
222 East Weber Avenue, Room 202
Stockton, CA 95201
- The Honorable Dan Dow
San Luis Obispo County District Attorney
1035 Palm Street, 4th Floor
San Luis Obispo, CA 93408
- The Honorable Stephen Wagstaffe
San Mateo County District Attorney
400 County Center, Third Floor
Redwood City, CA 94033
- The Honorable Joyce Dudley
Santa Barbara County District Attorney
1112 Santa Barbara Street
Santa Barbara, CA 93101
- The Honorable Jeffrey Rosen
Santa Clara County District Attorney
70 West Hedding Street, West Wing
San Jose, CA 95110
- The Honorable Jeff Rosell
Santa Cruz County District Attorney
701 Ocean Street, Room 200
Santa Cruz, CA 95060
- The Honorable Stephen Carlton
Shasta County District Attorney
1355 West Street
Redding, CA 96001
- The Honorable Lawrence Allen
Sierra County District Attorney
100 Courthouse Square
Downsville, CA 95936
- The Honorable James Kirk Andrus
Siskiyou County District Attorney
P.O. Box 988
Yreka, CA 96097
- The Honorable Krishna Abrams
Solano County District Attorney
675 Texas Street, Suite 4500
Fairfield, CA 94533
- The Honorable Jill Ravitch
Sonoma County District Attorney
600 Administration Drive, Room 212J
Santa Rosa, CA 95403
- The Honorable Birgit Fladager
Stanislaus County District Attorney
832 12th Street, Suite 300
Modesto, CA 95354
- The Honorable Amanda Hopper
Sutter County District Attorney
463 Second Street, Suite 102
Yuba City, CA 95991
- The Honorable Gregg Cohen
Tehama County District Attorney
444 Oak Street, Room L
Red Bluff, CA 96080
- The Honorable Eric Heryford
Trinity County District Attorney
P.O. Box 310
Weaverville, CA 96093
- The Honorable Tim Ward
Tulare County District Attorney
221 South Mooney Boulevard,
Rm 224
Visalia, CA 93291-4593
- The Honorable Laura Krieg
Tulahoma County District Attorney
423 North Washington Street
Sonora, CA 95370
- The Honorable Gregory Totten
Ventura County District Attorney
800 South Victoria Avenue
Ventura, CA 93009
- The Honorable Jeff Relsig
Yolo County District Attorney
301 Second Street
Woodland, CA 95695
- The Honorable Patrick McGrath
Yuba County District Attorney
215 Fifth Street
Marysville, CA 95901
- The Honorable Mike Feuer
Office of the City Attorney, Los Angeles
800 City Hall East
200 North Main Street
Los Angeles, CA 90012
- The Honorable James Sanchez
Office of the City Attorney, Sacramento
915 I Street, 4th Floor
Sacramento, CA 95814
- The Honorable Jan Goldsmith
Office of the City Attorney, San Diego
1200 Third Avenue, Suite 1620
San Diego, CA 92101
- The Honorable Dennis Herrera
Office of the City Attorney, San Francisco
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
- The Honorable Richard Doyle
Office of the City Attorney, San Jose
200 East Santa Clara Street, 16th Floor
San Jose, CA 95113

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 27001.¹ 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 publishes~~ 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

¹ 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.

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 contaminant² 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”

² 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:

Name of Noticing Party or attorney for Noticing Party:

Page 1

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 :

Name of Noticing Party or attorney for Noticing Party:

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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.

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.