

## 60 DAY NOTICE OF VIOLATION

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

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DATE: June 30, 2015

To: All Parties Listed On Attachment "A"

and

California Attorney General's Office;  
District Attorney's Office for 58 counties;  
City Attorney's for San Francisco, San Diego, San Jose, Sacramento and Los Angeles;

From: Ms. Evelyn Wimberley

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I. My name is Evelyn Wimberley. 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 parties listed above pursuant to California Health & Safety Code §25249.6 et seq. ("Proposition 65"). The violations covered by this Notice consist of the product exposures, routes of exposures, and types of harm potentially resulting from exposure to the toxic chemical ("listed chemical") identified below, as follows:

<b>Product Exposure:</b>	<b>See Section VII. Exhibit A</b>
<b>Listed Chemical:</b>	<b>Carbon Monoxide, Carbon Black, Soot</b>
<b>Routes of Exposure:</b>	<b>Inhalation, Ingestion</b>
<b>Types of Harm:</b>	<b>Carcinogen, Causes Birth Defects and Other Reproductive Harm</b>

## II. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

The specific type of product that is causing consumer and occupational exposures in violation of Proposition 65, and that is covered by this Notice, is listed under "Product Category/Type" in Exhibit A in Section VII below. All products within the type covered by this Notice shall be referred to hereinafter as the "Products." The sales of these products in California dating at least as far back as December 14, 2014 are subject to this notice. As a result of the sales of these products, exposures to the listed chemical have been occurring without clear and reasonable warnings as required by Proposition 65. Without proper warnings regarding the toxic effects of exposures to the listed chemicals, resulting from use and contact with the products, California citizen 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.

California citizens, through the act of buying, acquiring or utilizing the products, are exposed to the listed chemical in homes, workplaces and everywhere else throughout California where these products are used. By way of example but not limitation, exposures occur when consumers use these products and inhale the combustion by-products associated with burning wood or other fuel, carbon black can also come off on the hands and is then absorbed through the skin or ingested via inhalation, hand to mouth behavior, hand to food to mouth behavior, etc.. These violations occur during foreseeable use of the products and when the product is used as intended. These activities cause men, women, children, pregnant women, and women of child bearing age to be exposed directly to the listed chemicals from the products. People likely to be exposed are women, men, infants and children. These violations and threatened violations pertain to Proposition 65 chemicals that are listed as carcinogens and as reproductive toxins.

### III. CONTACT INFORMATION

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

Mrs. Evelyn Wimberley  
c/o Mr. Stephen Ure  
Law Offices of Stephen Ure, PC.  
11622 El Camino Real, Suite 100  
San Diego, CA 92130  
Tel: 619-235-5400

### IV. PROPOSITION 65 INFORMATION

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 (916) 445-6900. For the Violator's reference, I have attached a copy of "Proposition 65: A Summary" which has been prepared by OEHHA.

### V. RESOLUTION OF NOTICED CLAIMS

Based on the allegations set forth in this Notice, I intend to file a citizen enforcement lawsuit against the alleged Violator unless such Violator enters into a binding written agreement to: (1) recall products already sold or undertake best efforts to ensure that the requisite health hazard warnings are provided to those whom have received such products; (2) provide clear and reasonable warnings for products sold in the future to eliminate the unknowing exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health & Safety Code §25249.7(b). If the alleged Violator is interested in resolving this dispute without resort to time-consuming and expensive litigation, please feel free to contact my counsel identified in Section III above. It should be noted that neither my counsel nor I can: (1) finalize any settlement until after the 60-day notice period has expired; nor (2) speak for the Attorney General or any District or City Attorney who received this Notice. Therefore, while reaching an agreement with me will resolve my claims, such agreement may not satisfy the public prosecutors.

### VI. ADDITIONAL INFORMATION

*THIS INFORMATION IS NOT REQUIRED TO BE PROVIDED UNDER TITLE 22CAL.CODE REGS., §12903 (b)(4).*

Identified below is a specific example of a product recently purchased and witnessed as being available for purchase or use in California that is within the category or type of offending product covered by this Notice. Based on publicly available information, the retailers, distributors and/or manufacturer(s) of the example within the category or type of product are also provided below. I believe and allege that the sale of the offending products also has occurred without the requisite Proposition 65 "clear and reasonable warnings" at one or more locations and/or via other means including, but not limited to, transactions made over-the-counter, business to business, through the internet, and/or via catalog by the Violator and other distributors and retailers of the manufacturer.

Product**	Retailer(s)	Manufacturer(s)/Distributor(s)
Garden Treasures Fire Pit	Lowes	Lowes; LG Sourcing Inc.

## VII. EXHIBIT A

Product Category/Type  
Outdoor/heaters

Such As\*  
Garden Treasures Fire Pit  
UPC: 883432102067

Toxins  
Carbon Monoxide, Carbon Black,  
Soot

\*The specifically identified example of the type of product which is subject to this Notice is for the recipient's benefit to assist in its investigation of, among other things, the magnitude of potential exposure to the listed chemical from other items within the product category/type listed in Exhibit A. It is important to note that this example is not meant to be an exhaustive or comprehensive identification of each specific offending product of the type listed under "Product Category/Type" in Exhibit A. Further, it is this citizen's position that the alleged Violator is obligated to continue to conduct in good faith an investigation into other specific products within the type or category described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipient's custody or control) during the relevant period so as to ensure that the requisite toxic warnings are provided to California citizens prior to purchase.

# CERTIFICATE OF MERIT

## Health and Safety Code Section 25249.7(d)

I, Stephen Ure, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party identified in the notice has violated Health and Safety Code §25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party.
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 this 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 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 information identified in Health and Safety Code §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 30, 2015



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Stephen Ure

## PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury:

I am a citizen of the United States, over the age of 18 years, and not a party to the within action; my business address is 11622 El Camino Real, Suite 100, San Diego, CA 92130.

On June 30, 2015, I served the following documents:

**60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH  
HEALTH & SAFETY CODE §25249.7(d);**

**PROPOSITION 65: A SUMMARY;**

**CERTIFICATE OF MERIT; AND**

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

on the Violator listed below via First Class Certified Mail through the United States Postal Service by placing a true and correct copy in a sealed envelope, addressed to the Violator and providing such envelope to a United States Postal Service Representative:

Violators: Those Parties Listed on Attachment "A".

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:

Via Electronic Filing on <a href="http://oag.ca.gov/prop65">http://oag.ca.gov/prop65</a>	The Attorney General of the State of California
By placing each envelope in a United States Postal Service Box, first class postage pre-paid	The District Attorneys for each of the 58 California Counties and;  The City Attorneys for Los Angeles, San Diego, San Jose, San Francisco, Sacramento, Anaheim, Burbank, Torrance, and Oakland

A list of addresses for each of the recipient's is attached.

Executed on June 30, 2015 San Diego, California

  
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Stephen Ure

District Attorney COLUSA COUNTY 547 Market Street, Ste. 102 Colusa, CA 95932	District Attorney DEL NORTE COUNTY 450 H Street, Room 171 Crescent City, CA 95531	District Attorney SHASTA COUNTY 1525 Court Street, Third Floor Redding, CA 96001-1632	District Attorney SIERRA COUNTY 100 Courthouse Square Downieville, CA 95936
District Attorney CONTRA COSTA COUNTY 725 Court Street, Fourth Floor Martinez, CA 94553	District Attorney EL DORADO COUNTY 515 Main Street Placerville, CA 95667	District Attorney SOLANO COUNTY 675 Texas Street, Ste. 4500 Fairfield, CA 94533	District Attorney SONOMA COUNTY 600 Administration Drive, Room 212J Santa Rosa, CA 95403
District Attorney FRESNO COUNTY 2220 Tulare Street, Ste. 1000 Fresno, CA 93721	District Attorney GLENN COUNTY PO Box 430 Willows, CA 95988	District Attorney SUTTER COUNTY PO BOX 1555 Yuba City, CA 95992	District Attorney TEHAMA COUNTY PO BOX 519 Red Bluff, CA 96080
District Attorney HUMBOLDT COUNTY 825 5th Street Eureka, CA 95501	District Attorney IMPERIAL COUNTY 940 West Main Street, Ste. 102 El Centro, CA 92243	District Attorney TULARE COUNTY 221 South Mooney Blvd., Suite 224 Visalia, CA 93291	District Attorney TUOLUMNE COUNTY 423 No. Washington Street Sonora, CA 95370
District Attorney INYO COUNTY PO Drawer D Independence, CA 93526	District Attorney KERN COUNTY 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney YOLO COUNTY 301 Second Street Woodland, CA 95695	District Attorney YUBA COUNTY 215 Fifth Street, Ste. 152 Marysville, CA 95901
District Attorney LAKE COUNTY 255 N. Forbes Street Lakeport, CA 95453	District Attorney LASSEN COUNTY 220 S. Lassen Street, Ste. 8 Susanville, CA 96130	District Attorney County of San Bernardino 316 N. Mountain View Ave San Bernardino, CA 92415-0004	Office of the City Attorney CITY OF BURBANK 275 E. Olive Avenue Burbank, CA 91502
District Attorney MARIN COUNTY 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney MARIPOSA COUNTY PO BOX 730 Mariposa, CA 95338	Office of the City Attorney CITY OF LOS ANGELES 200 N. Main Street Los Angeles, CA 90012	Office of the City Attorney CITY OF TORRANCE 3031 Torrance Blvd. Torrance, CA 90503
District Attorney MERCED COUNTY 2222 M Street Merced, CA 95340	District Attorney MODOC COUNTY 204 S. Court Street, Room 202 Alturas, CA 96101	Office of the City Attorney City of Oakland 505 14 <sup>th</sup> Street 12 <sup>th</sup> Floor Oakland, CA 94612	Office of the City Attorney City of San Jose 200 East Santa Clara Street San Jose, CA 95113
District Attorney MONTEREY COUNTY PO BOX 1131 Salinas, CA 93902	District Attorney NAPA COUNTY PO BOX 720 Napa, CA 94559	Office of the City Attorney CITY OF ANAHEIM 200 S. Anaheim Blvd. Anaheim, CA 92805	
District Attorney County of Los Angeles 210 West Temple Street, Suite 18000 Los Angeles, CA 90012-3210	District Attorney NEVADA COUNTY 110 Union Street Nevada City, CA 95959		
District Attorney PLACER COUNTY 10810 Justice Center Drive Roseville, CA 95678	District Attorney PLUMAS COUNTY 520 Main Street, Room 404 Quincy, CA 95971		
District Attorney SACRAMENTO COUNTY PO BOX 749 Sacramento, CA 95812	District Attorney SAN BENITO COUNTY 419 4th Street Hollister, CA 95023-3801		
District Attorney SAN JOAQUIN COUNTY PO BOX 990 Stockton, CA 95202	District Attorney SAN LUIS OBISPO COUNTY 1035 Palm Street San Luis Obispo, CA 93408		


Attachment "A"

<p>Robert A. Niblock , Chairman, President &amp; CEO Lowe's Companies, Inc. 1000 Lowe's Blvd Mooresville, NC 28117</p>	<p>Mike Menser, President L G Sourcing Inc. 1605 Curtis Bridge Road Wilkesboro, NC 286972231</p>
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