

ECOLOGY LAW CENTER

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FEBRUARY 16, 2018

NOTICE OF VIOLATIONS CALIFORNIA SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT

Proposition 65 Enforcement Reporting
Attn: Prop 65 Coordinator
1515 Clay Street
P.O. Box 70550
Oakland, CA 94612

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

Re: Violations of Proposition 65 - - Carbon Monoxide Exposures from Fire
Pits

In accord with California Health & Safety Code § 25249.7, Ecological Rights Foundation ("ERF") hereby gives you notice that the companies listed on **Exhibit A** ("Noticed Parties"), have violated and are in ongoing violation of California Health & Safety Code § 25249.6, which 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."

The above-referenced violations occur when California residents use wood burning fire pits. The fire pit products are used primarily for cooking, heating, and ambience. Combustion of wood produces and exposes people to **carbon monoxide**, a chemical known to the State of California to cause reproductive toxicity. Because the combustion of wood causes carbon monoxide to be released into the air, people using wood burning fire pits, and others standing near the products when wood is burning in or on the products, inhale carbon monoxide. Exposure to carbon monoxide is via the inhalation route. These products cause carbon monoxide exposures to occur in people's yards, at parks and beaches, and everywhere else throughout California where the products are used. These violations are alleged for consumer and environmental exposures.

Included on **Exhibit A** is a non-exclusive list of examples of the types of products, marketed and sold by the Noticed Parties in the State of California. Though specific models or SKU or product numbers are given as examples, this Notice pertains to all models, and all variations, of the specific type of product (wood fire pits) of which the named models are examples.

The noticed parties on **Exhibit A**, and on the attached Certificate of Service, did not and do not provide people with clear and reasonable warnings before exposing California Residents to carbon monoxide.

The above-referenced violations have occurred every day since at least February 16, 2015, and will continue every day until clear and reasonable warnings are given.

Pursuant to California Health & Safety Code § 25249.7, ERF intends to bring an enforcement action against each Noticed Party 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify the violations discussed in this notice letter. The public enforcement agencies that have been served with copies of this notice of violations are identified in the attached Certificate of Service.


ERF is a California non-profit corporation dedicated to protecting human and environmental health, including raising awareness of, and reducing exposures to, toxic chemicals. The following individual is the responsible individual within ERF for purposes of this Notice:

James Lamport, Executive Director
Ecological Rights Foundation
867 B Redwood Drive
Garberville, California 95542
Telephone: (707) 923-4372

ERF has retained the following counsel to represent them in this matter (please direct communications to counsel):

Fredric Evenson
Ecology Law Center
P.O. Box 1000
Santa Cruz, California 95061
Telephone: (831) 454-8216
Email: evenson@ecologylaw.com

Sincerely,



Fredric Evenson

Exhibit A
February 16, 2018 Notice of Violations
Carbon Monoxide Exposures from Wood Burning Fire Pits

Names and Addresses of Responsible Parties	Non-Exclusive Examples of the Products*	Item#, UPC or SKU # or Further Description
<p>President or CEO Noble House Home Furnishings, LLC 7050 Deering Avenue Canoga Park, CA 91303</p> <p>Robert F Kull, Registered Agent Noble House Home Furnishings, LLC 1337 Ocean Ave. Ste. B Santa Monica, CA 90401</p> <p>President or CEO Noble House Home Furnishings, LLC 21325 Superior St. Chatsworth, CA 91311</p> <p>Marshall R. Bernes, CEO Noble House Home Furnishings, LLC 20958 Hillside Dr. Topanga, CA 90290</p>	<p>- Micah 29" Fiber-Reinforced Concrete Wood Burning Fire Pit -Round - Natural Stone</p>	<p>- UPC# 849114925713</p>
<p>Francis S. Blake, CEO The Home Depot, Inc. 2455 Paces Ferry Road Atlanta, GA 30339</p>	<p>- 28 in. x 14 in. Steel Wood Random Stone Brown Square Fire Pit Kit</p> <p>- 44 in. x 14 in. Metal Wood Fossill Limestone Round Fire Pit Kit</p> <p>- 44 in. Random Stone Gray Round Fire Pit Kit</p> <p>- 44 in. Random Stone Limestone Fire Pit Kit</p> <p>- 44 in. Random Stone Brown Round Fire Pit Kit</p> <p>- 30 in. Fossill Limestone Fire Pit Kit</p>	<p>- Model # RBSFP</p> <p>- Model # FSFPL</p> <p>- Model # RSFPG</p> <p>- Model # RSFPL</p> <p>- Model # RSFPB</p> <p>- Model # FSFPLS30</p>

	<ul style="list-style-type: none"> - 28 in. x 14 in. Steel Wood Random Stone Limestone Square Fire Pit Kit - 28 in. x 14 in. Steel Wood Random Stone Gray Square Fire Pit - 28 in. x 14 in. Steel Wood Fossil Limestone Square Fire Pit Kit 	<ul style="list-style-type: none"> - Model # RLSSFP - Model # RGSFP - Model # FLSSFP
Wayfair LLC President or CEO c/o Incorporating Services, LTD. 4 Copley Place, 7th floor Boston, MA 02116	<ul style="list-style-type: none"> - 28 in. x 14 in. Steel Wood Random Stone Brown Square Fire Pit Kit - 44 in. x 14 in. Metal Wood Fossil Limestone Round Fire Pit Kit - 44 in. Random Stone Gray Round Fire Pit Kit - 44 in. Random Stone Limestone Fire Pit Kit - 44 in. Random Stone Brown Round Fire Pit Kit - 30 in. Fossil Limestone Fire Pit Kit - 28 in. x 14 in. Steel Wood Random Stone Limestone Square Fire Pit Kit - 28 in. x 14 in. Steel Wood Random Stone Gray Square Fire Pit - 28 in. x 14 in. Steel Wood Fossil Limestone Square Fire Pit Kit 	<ul style="list-style-type: none"> - Model # RBSFP - Model # FSFPL - Model # RSFPG - Model # RSFPL - Model # RSFPB - Model # FSFPLS30 - Model # RLSSFP - Model # RGSFP - Model # FLSSFP

C T Corporation System, Registered Agent Wal-Mart Stores, Inc. 818 W 7th St., Ste. 930 Los Angeles, CA 90017 Michael Duke, CEO Wal-Mart Stores, Inc. 124 West Capitol Ave. Ste. 1900 Little Rock, AR 72201	- 28 in. x 14 in. Steel Wood Random Stone Brown Square Fire Pit Kit	- Model # RBSFP
	- 44 in. x 14 in. Metal Wood Fossil Limestone Round Fire Pit Kit	- Model # FSFPL
	- 44 in. Random Stone Gray Round Fire Pit Kit	- Model # RSFPG
	- 44 in. Random Stone Limestone Fire Pit Kit	- Model # RSFPL
	- 44 in. Random Stone Brown Round Fire Pit Kit	- Model # RSFPB
	- 30 in. Fossil Limestone Fire Pit Kit	- Model # FSFPLS30
	- 28 in. x 14 in. Steel Wood Random Stone Limestone Square Fire Pit Kit	- Model # RLSSFP
	- 28 in. x 14 in. Steel Wood Random Stone Gray Square Fire Pit	- Model # RGSFP
	- 28 in. x 14 in. Steel Wood Fossil Limestone Square Fire Pit Kit	- Model # FLSSFP

* These non-exclusive examples of the category or type of product that is subject to this Notice is for the recipient's benefit in its investigation of ERF's allegations. These examples are not meant to be an exhaustive or comprehensive identification of each specific offending product of the category or type of products subject to this notice. It is ERF's position that the alleged Violators are obligated to conduct a good faith investigation into other specific products within the identified category or type that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipient's custody or control) during the past three years, to ensure that clear and reasonable warnings are provided to California citizens prior to purchase, or retroactively if necessary.


Certificate of Merit
Health & Safety Code Section 25249.7(d)

I, Fredric Evenson, hereby declare:

- (1) This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the parties identified in the notices have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
- (2) I am the attorney for the noticing party.
- (3) I have consulted with 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 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)(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.

Date: February 16, 2018

By:



Fredric Evenson

CERTIFICATE OF SERVICE

I am over the age of 18. My business address is P.O. Box 1000, Santa Cruz, CA 95061.

On February 16, 2018 I served the following:

- 1) Notice of Violations: California Safe Drinking Water and Toxic Enforcement Act
- 2) Certificate of Merit: Health and Safety Code Section 25249.7(d)
- 3) Appendix A: The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary
- 4) Certificate of Service

by enclosing copies of the same in a sealed envelope addressed to each party on the attached Service List - Noticed Parties and depositing the envelope in the U.S. mail with postage fully prepaid for delivery by Certified Mail. Place of mailing: Santa Cruz, CA.

See Attached: **Service List - Noticed Parties**

On February 16, 2018, I also served the following:


- 1) Notice of Violations: California Safe Drinking Water and Toxic Enforcement Act
- 2) Certificate of Merit: Health and Safety Code Section 25249.7(d)
- 3) Certificate of Merit (Attorney General Copy): Factual information sufficient to establish the basis of the Certificate of Merit (only sent to Attorney General)
- 4) Certificate of Service

by enclosing copies of the same in sealed envelopes addressed to each of the public enforcement agencies listed on the attached Service List of Public Enforcers, and depositing the envelopes in the U.S. mail with postage fully prepaid for delivery by First Class Mail. Place of mailing: Santa Cruz, CA.

by sending portable document format (.pdf) files of the same to the electronic mail addresses to each of the public prosecutors identified by the California Attorney General as having authorized electronic service of notices. These public enforcement agencies appear on the attached Service List with their electronic mail addresses.

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

Executed February 16, at Santa Cruz, CA.


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Service List – Noticed Parties

Michael Duke, CEO Wal-Mart Stores, Inc. 124 West Capitol Ave. Ste. 1900 Little Rock, AR 72201	President or CEO Noble House Home Furnishings, LLC 7050 Deering Avenue Canoga Park, CA 91303	Robert F Kull, Registered Agent Noble House Home Furnishings, LLC 1337 Ocean Ave. Ste. B Santa Monica, CA 90401
President or CEO Noble House Home Furnishings, LLC 21325 Superior St. Chatsworth, CA 91311	Marshall R. Bernes, CEO Noble House Home Furnishings, LLC 20958 Hillside Dr. Topanga, CA 90290	Francis S. Blake, CEO The Home Depot, Inc. 2455 Paces Ferry Road Atlanta, GA 30339
Wayfair LLC President or CEO c/o Incorporating Services, LTD. 4 Copley Place, 7th floor Boston, MA 02116	C T Corporation System, Registered Agent Wal-Mart Stores, Inc. 818 W 7th St., Ste. 930 Los Angeles, CA 90017	

Service List – Public Prosecutors

Office of the District Attorney Alameda County 1225 Fallon Street, Room 900 Oakland, CA 94612	Office of the District Attorney Lassen County mlatimer@co.lassen.ca.us	Office of the District Attorney San Benito County 419 4th Street Hollister, CA 95023	Office of the District Attorney Tehama County P.O. Box 519 Red Bluff, CA 96080
Office of the District Attorney Alpine County P.O. Box 248 Markleeville, CA 96120	Office of the District Attorney Los Angeles County 211 W. Temple Street, Suite 1200 Los Angeles, CA 90012	Office of the District Attorney San Bernardino County 303 W. Third Street San Bernardino, CA 92415	Office of the District Attorney Trinity County P.O. Box 310 Weaverville, CA 96093
Office of the District Attorney Amador County 708 Court Street, #202 Jackson, CA 95642	Office of the District Attorney Madera County 209 West Yosemite Avenue Madera, CA 93637	Office of the District Attorney San Diego County 330 W. Broadway, Suite 1300 San Diego, CA 92101	Office of the District Attorney Tulare County Prop65@co.tulare.ca.us
Office of the District Attorney Butte County 25 County Center Drive Oroville, CA 95965	Office of the District Attorney Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	Office of the District Attorney San Francisco County gregory.alker@sfgov.org	Office of the District Attorney Tuolumne County 423 N. Washington Street Sonora, CA 95370
Office of the District Attorney Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	Office of the District Attorney Mariposa County P.O. Box 730 Mariposa, CA 95338	Office of the District Attorney San Joaquin County DAConsumer.Environmental@sjcda.org	Office of the District Attorney Ventura County daspecialops@ventura.org
Office of the District Attorney Colusa County 346 5th Street, Suite 101 Colusa, CA 95932	Office of the District Attorney Mendocino County P.O. Box 1000 Ukiah, CA 95482	Office of the District Attorney San Luis Obispo County edobroth@co.slo.ca.us	Office of the District Attorney Yolo County cfepd@yolocounty.org
Office of the District Attorney Contra Costa County sgrassini@contracostada.org	Office of the District Attorney Merced County 550 West Main Street Merced, CA 95340	Office of the District Attorney San Mateo County 400 County Center, Third Floor Redwood City, CA 94063	Office of the District Attorney Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
Office of the District Attorney Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	Office of the District Attorney Modoc County 204 S. Court Street Room 202 Alturas, CA 96101	Office of the District Attorney Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	Oakland City Attorney City Hall, 6th Floor 1 Frank Ogawa Plaza Oakland, California 94612
Office of the District Attorney El Dorado County 515 Main Street Placerville, CA 95667	Office of the District Attorney Mono County P.O. Box 617 Bridgeport, CA 93517	Office of the District Attorney Santa Clara County EPU@da.sccgov.org	Office of the City Attorney City of San Francisco City Hall, Room 234 1 Dr. Carlton B. Goodlett Pl. San Francisco, CA 94102
Office of the District Attorney Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	Office of the District Attorney Monterey County Prop65DA@co.monterey.ca.us	Office of the District Attorney Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	Office of the City Attorney City of Sacramento 915 I Street, 4th Floor Sacramento, CA 95814
Office of the District Attorney Glenn County P.O. Box 430 Willows, CA 95988	Office of the District Attorney Napa County CEPD@countyofnapa.org	Office of the District Attorney Shasta County 1355 West Street Redding, CA 96001	Office of the City Attorney City of San Jose 200 E. Santa Clara St. San Jose, CA 95113
Office of the District Attorney Humboldt County 825 5th Street, 4th Floor Eureka, CA 95501	Office of the District Attorney Nevada County 201 Commercial Street Nevada City, CA 95959	Office of the District Attorney Sierra County P.O. Box 457 Downieville, CA 95936	Office of the City Attorney City of Los Angeles 200 N. Main Street, Suite 800 Los Angeles, CA 90012
Office of the District Attorney Imperial County 940 West Main Street, Suite 102 El Centro, CA 92243	Office of the District Attorney Orange County 401 Civic Center Drive West Santa Ana, CA 92701	Office of the District Attorney Siskiyou County P.O. Box 986 Yreka, CA 96097	Office of the City Attorney City of San Diego 1200 Third Ave., Suite 1620 San Diego, CA 92101
Office of the District Attorney Inyo County P.O. Box D Independence, CA 93526	Office of the District Attorney Placer County 10810 Justice Center Drive Roseville, CA 95678	Office of the District Attorney Solano County 675 Texas Street, Suite 4500 Fairfield, CA 94533	Proposition 65 Enforcement Reporting Attn: Prop 65 Coordinator 1515 Clay Street P.O. Box 70550 Oakland, CA 94612
Office of the District Attorney Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	Office of the District Attorney Plumas County 520 Main Street, Room 404 Quincy, CA 95971	Office of the District Attorney Sonoma County jbarnes@sonoma-county.org	
Office of the District Attorney Kings County 1400 West Lacey Blvd. Hanford, CA 93230	Office of the District Attorney Riverside County Prop65@rivcoda.org	Office of the District Attorney Stanislaus County 832 12th Street, Suite 300 Modesto, CA 95354	
Office of the District Attorney Lake County 255 N. Forbes Street Lakeport, CA 95453	Office of the District Attorney Sacramento County Prop65@sacda.org	Office of the District Attorney Sutter County 446 Second Street, Suite 102 Yuba City, CA 95991	