

**60 DAY NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE  
SECTION 25249.5 ET SEQ. (PROPOSITION 65)**

November 1, 2018

To:

Attn: CEO or President  
Bed Bath & Beyond Inc.  
650 Liberty Ave  
Union, NJ 07083

Attn: CEO or President  
Sunny Marketing Systems Inc. DBA  
Earth Therapeutics, Ltd.  
163 E. Bethpage Rd.  
Plainview, NY 11803

CC: California Attorney General's Office;  
District Attorney's Offices for All California Counties; and  
City Attorneys for San Francisco, San Diego, San Jose, Sacramento, and Los Angeles

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**I. INTRODUCTION**

Consumer Protection Group, LLC ("CPG") is the noticing entity, acting in the interest of the general public. It seeks to reduce or eliminate the presence of hazardous substances in consumer products sold in California, and to ensure that California consumers are aware of the presence of such substances in consumer goods so that they can make an educated effort to limit their own exposure where deemed necessary.

This Notice is provided to the public agencies listed above pursuant to California Health & Safety Code §§ 25249.6, *et seq.* ("Proposition 65"). As noted above, notice is also being provided to the violators, Bed Bath & Beyond of Inc. and Sunny Marketing Systems Inc. DBA Earth Therapeutics, Ltd. (the "Violators"). The violations covered by this Notice consist of the product exposures, routes of exposure, and types of harm potentially resulting from exposure to the toxic chemicals ("listed chemicals") identified below, as follows:

|                     |   |
|---------------------|---|
| Product Exposure:   | Mind Body Therapy Anti-Stress Neck Pillow         |
| Chemical:           | Di-(2-ethylhexyl) phthalate                       |
| Routes of Exposure: | Ingestion, Dermal Absorption                      |
| Types of Harm:      | Cancer, Birth Defects and Other Reproductive Harm |

## **II. PRODUCT AND TIME OF VIOLATIONS**

The specific type of product that is causing consumer exposures in violation of Proposition 65, and that is covered by this Notice, is Mind Body Therapy Anti-Stress Neck Pillow. Ongoing violations have occurred since at least November 1, 2017, as well as every day since the products were introduced for sale in California. These violations will continue until clear and reasonable warnings are provided prior to exposure of the identified chemicals. The method of warning should be a label in the product itself.

As a result of sales of this product, exposures to the listed chemicals 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, California consumers lack the information necessary to make informed decisions on whether and how to eliminate (or reduce) the risk of exposure to the toxic chemicals from the reasonably foreseeable use of the products.

California consumers are exposed to the listed chemicals by buying, acquiring or utilizing the products. By way of example but not limitation, direct exposures occur when people (including children) open, close or otherwise handle the neck pillow carry case. The concentration of the chemical present within the case constitutes a significant chemical dose exposure to consumers through their use of the product. Exposure to the contaminants present within the noted product may also occur through hand to mouth ingestion under typical and foreseeable use of the neck pillow.

## **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 Violators' reference, attached is a copy of "Proposition 65: A Summary," which has been prepared by OEHHA.

## **V. RESOLUTION OF NOTICED CLAIMS**

Consistent with goals of Proposition 65 and a desire to have these violations corrected, CPG is interested in seeking a resolution of this matter that includes a binding written agreement by the Violators to: (1) recall any products already sold, or undertake best efforts to ensure that the requisite health hazard warnings are provide to those who have received such products; (2) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; and (3) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as expensive and time-consuming litigation. It should be noted that counsel cannot (1) finalize any settlement until after the 60-day notice period has expired; or (2) speak for the California Attorney General or any District or City Attorney who has received this notice. Therefore, while reaching an agreement with CPG will resolve its claims; such an agreement may not satisfy the public prosecutors.

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Please direct all questions concerning this notice to CPG at the following address:

Jonathan M. Genish, Esq.  
BLACKSTONE LAW, A.P.C.  
1801 Century Park East #2400  
Los Angeles, CA 90067  
Telephone (310) 622-4278  
Email: [jgenish@blackstonepc.com](mailto:jgenish@blackstonepc.com)

Sincerely,



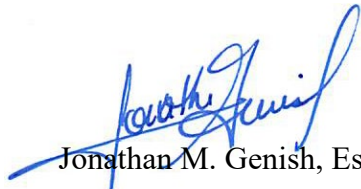
BLACKSTONE LAW, APC  
Jonathan M. Genish, Esq.

## CERTIFICATE OF MERIT

I, Jonathan M. Genish, hereby declare:

1. This Certificate of Merit accompanies the attached Sixty-Day Notice in which it is alleged that the parties identified in the Notice have violated Health & 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 experience 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 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 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 Violators will be able to establish any of the affirmative defenses set forth in the statute; and
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 § 25249.7(11)(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: November 1, 2018

  
Jonathan M. Genish, Esq.

I, Karen Ramirez, hereby declare:

1. I am, and was at the time of service hereinafter mentioned, a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 1801 Century Park East #2400, Los Angeles CA 90067.
2. On November 1, 2018, I served the following documents:
  - 60-Day Notice of Violation
  - Certificate of Merit
  - "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary"on the following party by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below, and depositing it at a United States Postal Service Office for delivery both by Certified Mail:

Attn: CEO or President  
Bed Bath & Beyond of  
California Limited Liability Company  
2710 Gateway Oaks Dr, Suite 150N  
Sacramento, CA 95833-3505

Attn: CEO or President  
Sunny Marketing Systems Inc. DBA  
Earth Therapeutics, Ltd  
163 East Bethpage Road  
Plainview, NY 11803

3. On November 1, 2018, I served the following documents:
  - 60-Day Notice of Violation
  - Certificate of Meriton each of the parties on the service list attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the service list attached hereto, and depositing it at a United States Postal Service Office for delivery by First Class Mail.
4. On November 1, 2018, I served the following documents:
  - 60-Day Notice of Violation
  - Certificate of Meriton the following party by causing a true and correct .PDF copy thereof to be sent via electronic mail to the party listed below, pursuant to Cal. Code Regs., title. 27, § 25903(c)(1):

Alameda County District Attorney  
[CEPDProp65@acgov.org](mailto:CEPDProp65@acgov.org)

Calaveras County District Attorney  
[Prop65Env@co.calaveras.ca.us](mailto:Prop65Env@co.calaveras.ca.us)

Contra Costa County District Attorney  
[sgrassini@contracostada.org](mailto:sgrassini@contracostada.org)

Lassen County District Attorney  
[mlatimer@co.lassen.ca.us](mailto:mlatimer@co.lassen.ca.us)

Monterey County District Attorney  
[Prop65DA@co.monterey.ca.us](mailto:Prop65DA@co.monterey.ca.us)

Napa County District Attorney  
[CEPD@countyofnapa.org](mailto:CEPD@countyofnapa.org)

Riverside County District Attorney  
[Prop65@rivcoda.org](mailto:Prop65@rivcoda.org)

Sacramento County District Attorney  
[Prop65@sacda.org](mailto:Prop65@sacda.org)

San Diego County District Attorney  
[CityAttyCrimProp65@sandiego.gov](mailto:CityAttyCrimProp65@sandiego.gov)

San Francisco County District Attorney  
[gregory.alker@sfgov.org](mailto:gregory.alker@sfgov.org)

San Joaquin County District Attorney  
[DAConsumer.Environmental@sjcda.org](mailto:DAConsumer.Environmental@sjcda.org)

San Luis Obispo County District Attorney  
[edobroth@co.slo.ca.us](mailto:edobroth@co.slo.ca.us)

Santa Barbara County District Attorney  
[DAProp65@co.santa-barbara.ca.us](mailto:DAProp65@co.santa-barbara.ca.us)

Santa Clara County District Attorney  
[EPU@da.sccgov.org](mailto:EPU@da.sccgov.org)

Sonoma County District Attorney  
[jbarnes@sonoma-county.org](mailto:jbarnes@sonoma-county.org)

Tulare County District Attorney  
[Prop65@co.tulare.ca.us](mailto:Prop65@co.tulare.ca.us)

Ventura County District Attorney  
[daspecialops@ventura.org](mailto:daspecialops@ventura.org)

Yolo County District Attorney  
[cfepd@yolocounty.org](mailto:cfepd@yolocounty.org)

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

Dated: November 1, 2018

  
Karen Ramirez

## SERVICE LIST

Alpine County District Attorney  
P.O. Box 248  
Markleeville, CA 96120

Amador County District Attorney  
708 Court Street #202  
Jackson, CA 95642

Butte County District Attorney  
25 County Center Drive, Suite 245  
Oroville, CA 95965

Colusa County District Attorney  
346 Fifth Street, Suite 101  
Colusa, CA 95932

Del Norte County District Attorney  
450 H Street, Room 171  
Crescent City, CA 95531

El Dorado County District Attorney  
515 Main Street  
Placerville, CA 95667

Fresno County District Attorney  
2220 Tulare Street, Suite 1000  
Fresno, CA 93721

Glenn County District Attorney  
P.O. Box 430  
Willows, CA 95988

Humboldt County District Attorney  
825 5th Street, 4th Floor  
Eureka, CA 95501

Imperial County District Attorney  
940 West Main Street, Suite 102  
El Centro, CA 92243

Inyo County District Attorney  
P.O. Box Drawer D  
168 N Edwards St  
Independence, CA 93526

Kern County District Attorney  
1215 Truxtun Avenue, 4th Floor  
Bakersfield, CA 93301

Kings County District Attorney  
1400 West Lacey Boulevard  
Hanford, CA 93230

Lake County District Attorney  
255 North Forbes Street  
Lakeport, CA 95453

Los Angeles County District Attorney  
211 West Temple St, Suite 1200  
Los Angeles, CA 90012

Madera County District Attorney  
209 West Yosemite Avenue  
Madera, CA 93637

Marin County District Attorney  
3501 Civic Center Drive, Room 130  
San Rafael, CA 94903

Mariposa County District Attorney  
5101 Jones Street, P.O. Box 730  
Mariposa, CA 95338

Mendocino County District Attorney  
100 North State Street, P.O. Box 1000  
Ukiah, CA 95482

Merced County District Attorney 550  
W. Main Street  
Merced, CA 95340

Modoc County District Attorney  
204 5. Court Street, Suite 202  
Alturas, CA 96101

Mono County District Attorney  
278 Main St  
Bridgeport, CA 93517

Nevada County District Attorney  
201 Commercial Street  
Nevada City, CA 95959

Orange County District Attorney  
401 W. Civic Center Drive  
Santa Ana, CA 92701

Placer County District Attorney  
10810 Justice Center Drive, Suite 240  
Roseville, CA 95678

Plumas County District Attorney  
520 Main Street, Room 404  
Quincy, CA 95971

San Benito County District Attorney  
419 4th Street, Second Floor  
Hollister, CA 95203

San Bernardino County District Attorney  
303 West 3rd Street, 6th Floor  
San Bernardino, CA 92415-0502

San Mateo County District Attorney  
400 County Center, Third Floor  
Redwood City, CA 94063

Shasta County District Attorney  
1355 West Street  
Redding, CA 96001

Sierra County District Attorney  
100 Courthouse Square  
Downieville, CA 95936

Siskiyou County District Attorney  
P.O. Box 986 Yreka,  
CA 96097

Solano County District Attorney  
675 Texas Street, Suite 4500  
Fairfield, CA 94533

Stanislaus County District Attorney  
832 12th Street, Suite 300  
Modesto, CA 95354

Sutter County District Attorney  
466 Second Street, Suite 102  
Yuba City, CA 95991

Tehama County District Attorney  
444 Oak Street, Room L  
Red Bluff, CA 96080

Trinity County District Attorney  
P.O. Box 310  
Weaverville, CA 96093

Tuolumne County District Attorney  
423 North Washington Street  
Sonora, CA 95370

Yuba County District Attorney  
215 Fifth Street  
Marysville, CA 95901

Office of the City Attorney, Los Angeles  
City Hall East  
200 North Main Street  
Los Angeles, CA 90012

Office of the City Attorney, Sacramento  
915 I Street, 4th Floor  
Sacramento, CA 95814

Office of the City Attorney, San Diego  
1200 Third Avenue, Suite 1620  
San Diego, CA 92101

Office of the City Attorney, San Francisco  
1 Dr. Carlton B. Goodlett Place, Room 234  
San Francisco, CA 94102

Office of the City Attorney, San Jose  
200 East Santa Clara Street, 16th  
Floor San Jose, CA 95113