

## The Law Office of Jack Fitzgerald, PC

Hillcrest Professional Building | 3636 Fourth Avenue, Suite 202 | San Diego, California 92103

Phone: (619) 692-3840 | Fax: (619) 362-9555

[www.jackfitzgeraldlaw.com](http://www.jackfitzgeraldlaw.com)

---

April 30, 2019

### **VIA CERTIFIED MAIL**

Swisher International Inc.

459 East 16th Street

Jacksonville, FL 32206

Xavier Becerra, Attorney General

Office of the Attorney General

Attn: Health & Safety Code § 25249.7(d)(1) (Proposition 65) Notice

1300 "I" Street

Sacramento, California 95814-2919

*[Additional District & City Attorneys Copied]*

**Re: Notice Pursuant to Cal. Health & Safety Code §§ 25249.7(a) & (d)(1)  
Violation or Threatened Violation of Proposition 65 by Swisher International Inc.**

To Swisher International Inc., Mr. Becerra, and Whomever Else it May Concern:

We represent California consumer Jennifer Fishman and write on her behalf, pursuant to California Health & Safety Code §§ 25249.7(a) & (d)(1), to notify you as to Swisher International Inc.'s ("Swisher") violation, and threatened violation, of § 25249.6, *i.e.*, Proposition 65.

The violations alleged by this Notice consist of types of harm that may potentially result from exposures to the toxic chemical Carbon Monoxide, which was listed as a known hazardous substance in January of 1989, as well as to Soot, a known carcinogen, which result from the combustion of rolling papers manufactured, distributed, and/or sold by Swisher, designed for use with tobacco and other legal smoking herbs.

### **NATURE OF ALLEGED VIOLATION**

#### **Duration of the Violations**

The violations have been occurring since at least August 8, 2018, and are ongoing.

#### **Provision of Proposition 65**

This Notice of Violation covers the "warning provision" of Proposition 65, which is found at California Health & Safety Code § 25249.6.

## The Law Office of Jack Fitzgerald, PC

Hillcrest Professional Building | 3636 Fourth Avenue, Suite 202 | San Diego, California 92103

Phone: (619) 692-3840 | Fax: (619) 362-9555

[www.jackfitzgeraldlaw.com](http://www.jackfitzgeraldlaw.com)

---

### Listed Chemical(s)

The listed chemicals involved in these violations are Carbon Monoxide, known to cause birth defects and reproductive harm, and Soot, a known carcinogen.

### Type of Product

The type of product causing these violations is rolling paper. Rolling paper is sold to consumers who wish to make their own cigarettes of tobacco, marijuana, or other legal smoking herbs and plants. Rolling paper marketed and sold by Swisher includes the "Hempire" brand, pictured below.



### Description and Route of Exposure

This Notice addresses consumer exposures to Carbon Monoxide and Soot as a result of burning and inhaling rolling papers when smoking. The route of exposure is inhalation of the smoke originating from the burning paper when it is used for its intended purpose of smoking. No clear and reasonable Proposition 65 warning is provided with these products regarding the presence of Carbon Monoxide and Soot in the products.

## RESOLUTION OF NOTICED CLAIMS

Based on the allegations set forth in this Notice, Jennifer Fishman intends to file a citizen enforcement lawsuit against Swisher International Inc. unless it agrees to provide clear and reasonable warnings for products sold or otherwise provided to consumers in the future to eliminate unknowing exposures to Carbon Monoxide and Soot exposures, and pay an appropriate civil penalty based on the factors enumerated in California Health and Safety Code Section 25249.7(b).

If Swisher is interested in resolving this dispute without resort to expensive and time-consuming litigation, it may contact me directly on behalf of Ms. Fishman. It should be noted, however, that neither Ms. Fishman nor I can finalize any settlement until after the 60-day

## The Law Office of Jack Fitzgerald, PC

Hillcrest Professional Building | 3636 Fourth Avenue, Suite 202 | San Diego, California 92103

Phone: (619) 692-3840 | Fax: (619) 362-9555

[www.jackfitzgeraldlaw.com](http://www.jackfitzgeraldlaw.com)

notice period has expired, nor speak for the Attorney General or any District or City Attorney who received this Notice. Therefore, be advised that, while reaching an agreement with Ms. Fishman will resolve her claims, such agreement may not satisfy the public prosecutors.

Sincerely,



Jack Fitzgerald

Attachment: Certificate of Merit (Cal. Health & Safety Code § 25249.7(d)(1))

cc: City & District Attorneys, as follows:

Nancy O'Malley, District Attorney, Alameda County 7776 Oakport Street, Suite 650 Oakland, CA 94621 CEPDProp65@acgov.org	Barbara Yook, District Attorney, Calaveras County 891 Mountain Ranch Rd. San Andreas, CA 95249 Prop65Env@co.calaveras.ca.us	Stacey Grassini, Deputy District Attorney, Contra Costa County 900 Ward Street Martinez, CA 94553 sgrassini@contracostada.org
Thomas L. Hardy, District Attorney, Inyo County 168 North Edwards Street Independence, CA 93526 inyoda@inyocounty.us	Michelle Latimer, Program Coordinator, Lassen County 2950 Riverside Dr. Ste. 102 Susanville, CA 96130 mlatimer@co.lassen.ca.us	Dije Ndreu, Deputy District Attorney, Monterey County 1200 Aguajito Road Monterey, CA 93940 Prop65DA@co.monterey.ca.us
Gary Lieberstein District Attorney, Napa County 931 Parkway Mall Napa, CA 94559 CEPD@countyofnapa.org	Paul E. Zellerbach District Attorney, Riverside County 3960 Orange St. Riverside, CA 92501 Prop65@rivcoda.org	Anne Marie Schubert, District Attorney, Sacramento County 901 G Street Sacramento, CA 95814 Prop65@sacda.org
Mark Ankcorn, Deputy City Attorney, San Diego 1200 Third Avenue San Diego, CA 92101 CityAttyProp65@sandiego.gov	Gregory Alker, Assistant District Attorney, San Francisco 732 Brannan Street San Francisco, CA 94103 gregory.alker@sfgov.org	Tori Verber Salazar, District Attorney, San Joaquin 222 E. Weber Avenue, Room 202 Stockton, CA 95202 DAConsumer.Environmental@sjcd a.org

## The Law Office of Jack Fitzgerald, PC

Hillcrest Professional Building | 3636 Fourth Avenue, Suite 202 | San Diego, California 92103

Phone: (619) 692-3840 | Fax: (619) 362-9555

[www.jackfitzgeraldlaw.com](http://www.jackfitzgeraldlaw.com)

Eric J. Dobroth, Deputy District Attorney, San Luis Obispo County Government Center Annex, 1035 Palm St. 4th Floor San Luis Obispo, CA 93408 edobroth@co.slo.ca.us	Christopher Dalbey, Deputy District Attorney, Santa Barbara 1112 Santa Barbara St. Santa Barbara, CA 93101 DAProp65@co.santa-barbara.ca.us	Yen Dang, Supervising Deputy District Attorney, Santa Clara 70 W Hedding St San Jose, CA 95110 EPU@da.sccgov.org
Jeffrey S. Rosell, District Attorney, Santa Cruz 701 Ocean Street Santa Cruz, CA 95060 Prop65DA@santacruzcounty.us	Stephan R. Passalacqua, District Attorney, Sonoma 600 Administration Dr Sonoma, CA 95403 jbarnes@sonoma-county.org	Phillip J. Cline, District Attorney, Tulare 221 S Mooney Blvd Visalia, CA 95370 Prop65@co.tulare.ca.us
Gregory D. Totten District Attorney, Ventura County 800 South Victoria Avenue Ventura, CA 93009 daspecialops@ventura.org	Jeff W. Reisig, District Attorney, Yolo County 301 Second Street Woodland, CA 95695 cfepd@yolocounty.org	District Attorney of Alpine County P.O. Box 248 Markleeville, CA 96120
District Attorney of Amador County 708 Court Street, Ste. 202 Jackson, CA 95642	District Attorney of Butte County Administration Building 25 County Center Drive Oroville, CA 95965	District Attorney of Colusa County 346 5 <sup>th</sup> St., #101 Colusa, CA 95932
District Attorney of Del Norte County 450 H Street, Ste. 171 Crescent City, CA 95531	District Attorney of El Dorado County 778 Pacific St. Placerville, CA 95667	District Attorney of Fresno County 2220 Tulare Street, Ste. 1000 Fresno, CA 93721
District Attorney of Glenn County P.O. Box 430 Willows, CA 95988	District Attorney of Humboldt County 825 5th Street, 4 <sup>th</sup> Floor Eureka, CA 95501	District Attorney of Imperial County 940 W. Main St., Suite 102 El Centro, CA 92243
District Attorney of Kern County 1215 Truxtun Avenue, 4 <sup>th</sup> Floor Bakersfield, CA 93301	District Attorney of Kings County 1400 West Lacey Blvd. Hanford, CA 93230	District Attorney of Lake County 255 N. Forbes Street Lakeport, CA 95453
District Attorney of Los Angeles County 211 W. Temple Street, Ste. 1200 Los Angeles, CA 90012	District Attorney of Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney of Marin County 3501 Civic Center Drive, Rm. 145 San Rafael, CA 94903
District Attorney of Mariposa County P.O. Box 730 Mariposa, CA 95338	District Attorney of Mendocino County P.O. Box 1000 Ukiah, CA 95482	District Attorney of Merced County 550 W. Main Street Merced, CA 95340
District Attorney of Modoc County	District Attorney of Mono County	District Attorney of Nevada County

## The Law Office of Jack Fitzgerald, PC

Hillcrest Professional Building | 3636 Fourth Avenue, Suite 202 | San Diego, California 92103

Phone: (619) 692-3840 | Fax: (619) 362-9555

[www.jackfitzgeraldlaw.com](http://www.jackfitzgeraldlaw.com)

204 S. Court Street, Rm. 202 Alturas, CA 96101-4020	P.O. Box 617 Bridgeport, CA 93546	201 Commercial Street Nevada City, CA 95959
District Attorney of Orange County 401 Civic Center Drive West Santa Ana, CA 92701	District Attorney of Placer County 10810 Justice Ctr. Drive, Ste. 240. Roseville, CA 95678	District Attorney of Plumas County 520 Main Street, Rm. 404 Quincy, CA 95971
District Attorney of San Benito County 419 Fourth Street, 2nd Fl. Hollister, CA 95023	District Attorney of San Bernardino County 303 W. 3 <sup>rd</sup> St., 6 <sup>th</sup> Floor San Bernardino, CA 92415	District Attorney of San Diego County 330 West Broadway, Ste. 1300 San Diego, CA 92101
District Attorney of San Mateo County 400 County Center, 3rd Fl. Redwood City, CA 94063	District Attorney of Shasta County 1355 West Street Redding, CA 96001	District Attorney of Sierra County Courthouse 100 Courthouse Sq., 2nd Fl. Downieville, CA 95936
District Attorney of Siskiyou County P.O. Box 986 Yreka, CA 96097	District Attorney of Solano County 675 Texas Street, Ste. 4500 Fairfield, CA 94533	District Attorney, Stanislaus County 832 12th Street, Ste. 300 Modesto, CA 95354
District Attorney of Sutter County 463 2 <sup>nd</sup> St. Suite 102 Yuba City, CA 95991	District Attorney of Tehama County 444 Oak St., Room L Red Bluff, CA 96080	District Attorney of Trinity County P.O. Box 310 11 Court Street Weaverville, CA 96093
District Attorney of Tuolumne County 423 N. Washington Street Sonora, CA 95370	District Attorney of Yuba County 215 Fifth Street Marysville, CA 95901	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Rm. 800 Los Angeles, CA 90012
San Francisco City Attorney's Office City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102	San Jose City Attorney's Office 200 East Santa Clara Street, 16 <sup>th</sup> Floor San Jose, CA 95113	California Attorney General's Office Attention: Proposition 65 Coordinator and Robert Thomas 1515 Clay Street, Ste. 2000 P.O. Box 70550 Oakland, CA 94612-0550