

NOTICE OF VIOLATION

California Safe Drinking Water and Toxic Enforcement Act

Hexavalent Chromium in Footwear Made With Leather Materials

September 27, 2019

This Notice of Violation (the "Notice") is provided to you pursuant to and in compliance with California Health and Safety Code Section 25249.7(d).

- For general information regarding the California Safe Drinking Water and Toxic Enforcement Act, see the attached summary provided by the California EPA (copies not provided to public enforcement agencies).
- This Notice is provided by the Center for Environmental Health ("CEH"), 2201 Broadway, Suite 508, Oakland, CA 94612, (510) 655-3900. CEH is a nonprofit corporation dedicated to protecting the environment, improving human health, and supporting environmentally sound practices. Caroline Cox is the Senior Scientist of and a responsible individual within CEH.

Description of Violation:

- Violator: The name and address of the violator is:

TB Footwear LLC
3 Columbus Circle
New York, NY 10019
- Time Period of Exposure: The violations have been occurring since at least September 28, 2016, and are ongoing.
- Provision of Proposition 65: This Notice covers the "warning provision" of Proposition 65, which is found at California Health and Safety Code Section 25249.6.
- Chemical(s) Involved: The name of the listed chemical involved in these violations is chromium (hexavalent compounds), which is also known as hexavalent chromium. Hexavalent chromium is listed under Proposition 65 as a chemical known to the State of California to cause cancer and reproductive toxicity. Exposures to hexavalent chromium occur from use of the products identified in this Notice.
- Type of Product: The specific type of product causing these violations is footwear made with leather materials. A non-exclusive example of this specific type of product is Tommy Bahama Orion Leather Venetian Drivers, Style No. TB7S00045, UPC No. 8-82976-78002-1.

- Description of Exposure: This Notice addresses consumer exposures to hexavalent chromium. Use of the products identified in this Notice results in human exposures to hexavalent chromium. The routes of exposure for the violations are: (1) dermal absorption directly through the skin when consumers wear, touch or handle the products or otherwise have direct skin to leather contact with the leather parts of the products; and (2) ingestion via hand to mouth contact after consumers wear, touch or handle the products. No clear and reasonable warning is provided with these products regarding the carcinogenic or reproductive hazards of hexavalent chromium.

Resolution of Noticed Claims:

Based on the allegations set forth in this Notice, CEH intends to file a citizen enforcement lawsuit against the alleged violator unless the violator agrees in a binding written instrument to: (1) recall products already sold; (2) provide clear and reasonable warnings for products sold in the future or reformulate such products to eliminate the hexavalent chromium exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health and Safety Code Section 25249.7(b). If any alleged violator is interested in resolving this dispute without resort to expensive and time-consuming litigation, please feel free to contact CEH through its counsel identified below. It should be noted that CEH cannot: (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 CEH's 60-day Notice. Therefore, while reaching an agreement with CEH will resolve its claims, such agreement may not satisfy the public prosecutors.

Preservation of Relevant Evidence:

This Notice also serves as a demand that each alleged violator preserve and maintain all relevant evidence, including all electronic documents and data, pending resolution of this matter. Such relevant evidence includes but is not limited to all documents relating to the presence or potential presence of hexavalent chromium in footwear; purchase and sales information for such products; efforts to comply with Proposition 65 with respect to such products; communications with any person relating to the presence or potential presence of hexavalent chromium in such products; and representative exemplars of each unit of any such products sold by each alleged violator in the year preceding this Notice through the date of any trial of the claims alleged in this Notice.

Please direct any inquiries regarding this Notice to CEH's counsel Eric S. Somers at Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117, (415) 913-7800, esomers@lexlawgroup.co

CERTIFICATE OF MERIT

Health & Safety Code § 25249.7(d)

I, Eric S. Somers, 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 an attorney with the Lexington Law Group, and I represent the noticing party, the Center for Environmental Health.

3. Members of my firm and 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 exposures to the listed chemical that is the subject of the action.

4. Based on the information obtained through those consultations, and on 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.

5. The copy of the 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 & 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.

September 27, 2019



Eric S. Somers
Attorney for CENTER FOR
ENVIRONMENTAL HEALTH

1 **PROOF OF SERVICE**

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3 I, Alexis Pearson, declare:

4 I am a citizen of the United States and employed in the County of San Francisco, State of
5 California. I am over the age of eighteen (18) years and not a party to this action. My business
6 address is 503 Divisadero Street, San Francisco, CA 94117 and my email address is
7 apearson@lexlawgroup.com.

8 On September 27, 2019, I served the following document(s) on all interested parties in
9 this action by placing a true copy thereof in the manner and at the addresses indicated below:

10 **NOTICE OF VIOLATION OF CALIFORNIA SAFE DRINKING WATER AND
11 TOXIC ENFORCEMENT ACT;**

12 **CERTIFICATE OF MERIT;** and

13 **THE SAFE DRINKING AND TOXIC ENFORCEMENT ACT OF 1986
14 (PROPOSITION 65): A SUMMARY** (only sent to those on service list marked with an
15 asterisk).

16 **BY MAIL:** I am readily familiar with the firm's practice for collecting and processing mail
17 with the United States Postal Service ("USPS"). Under that practice, mail would be deposited
18 with USPS that same day with postage thereon fully prepaid at San Francisco, California in the
19 ordinary course of business. On this date, I placed sealed envelopes containing the above
20 mentioned documents for collection and mailing following my firm's ordinary business practices.

21 *Please see attached service list.*

22 **BY FACSIMILE:** I caused all pages of the document(s) listed above to be transmitted via
23 facsimile to the fax number(s) as indicated and said transmission was reported as complete and
24 without error.

25 **BY ELECTRONIC MAIL:** I transmitted a PDF version of the document(s) listed above via
26 email to the email address(es) indicated on the attached service list [or noted above] before 5 p.m.
27 on the date executed.

28 Stacey Grassini, Deputy District Attorney
Contra Costa County
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sgrassini@contracostada.org

Yen Dang
Supervising Deputy District Attorney
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Michelle Latimer, Program Coordinator
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1 Stephan R. Passalacqua, District Attorney
2 Sonoma County
3 600 Administration Drive, Rm. 212J
4 Santa Rosa, CA 95403
5 jbarnes@sonoma-county.org

4 Phillip J. Cline, District Attorney
5 Tulare County
6 221 S. Mooney Avenue, Rm. 224
7 Visalia, CA 93291
8 Prop65@co.tulare.ca.us

7 Paul E. Zellerbach, District Attorney
8 Riverside County
9 4075 Main Street
10 Riverside, CA 92501
11 Prop65@rivcoda.org

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11 Yolo County
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14 cfepd@yolocounty.org

14 Dije Ndreu, Deputy District Attorney
15 Monterey County
16 1200 Aguajito Road
17 Monterey, CA 93940
18 Prop65DA@co.monterey.ca.us

17 Tori Verber Salazar, District Attorney
18 San Joaquin County
19 222 E. Weber Avenue, Room 202
20 Stockton, CA 95202
21 DAConsumer.Environmental@sjcda.org

20 Christopher Dalbey, Deputy District
21 Attorney, Santa Barbara County
22 1112 Santa Barbara Street
23 Santa Barbara, CA 93101
24 DAProp65@co.santa-barbara.ca.us

23 San Francisco City Attorney's Office
24 City Hall, Room 234
25 1 Dr. Carlton B. Goodlett Place
26 Valerie.lopez@sfcityatty.org
27 San Francisco, CA 94102

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Nancy O'Malley, District Attorney
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CEPDProp65@acgov.org

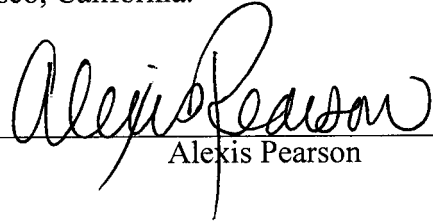
Office of the District Attorney
Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249
Prop65Env@co.calaveras.ca.us

1 **BY PERSONAL DELIVERY:** I placed all pages of the document(s) listed above in a sealed
2 envelope addressed to the party(ies) listed above, and caused such envelope to be delivered by
hand to the addressee(s) as indicated.

3 **BY OVERNIGHT DELIVERY:** I deposited such document(s) in a box or other facility
4 regularly maintained by FedEx, or delivered such document(s) to a courier or driver authorized by
FedEx, with delivery fees paid or provided for, and addressed to the person(s) being served.

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

7 Executed on September 27, 2019 at San Francisco, California.

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9 Alexis Pearson

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SERVICE LIST

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
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Oroville, CA 95965

District Attorney of Colusa County
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Colusa, CA 95932

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El Centro, CA 92243

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Bakersfield, CA 93301

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Hanford, CA 93230

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Lakeport, CA 95453

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District Attorney of Orange County
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District Attorney of Shasta County
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Los Angeles City Attorney's Office
City Hall East
200 N. Main Street, Rm. 800
Los Angeles, CA 90012

San Jose City Attorney's Office
200 East Santa Clara Street
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

Wayne Bailey, COO
TB Footwear LLC
3 Columbus Circle
New York, NY 10019