

# TTF LAWYERS

DIVISION OF THE TU FIRM  
A PROFESSIONAL LAW CORPORATION

HOANG HUY TU, \*  
WALTER EMIL TEAGUE, III,

\*Admitted in California and  
Washington D.C

□16185 BROOKHURST STREET  
FOUNTAIN VALLEY, CA 92708  
TELEPHONE: 714-636-6030  
FACSIMILE: 714-636-6048

□9143 E. VALLEY BLVD., #202  
ROSEMEAD, CA 91770  
TELEPHONE: 626-307-4000  
FACSIMILE: 626-307-4007

3305 W. SPRING MOUNTAIN RD.  
SUITES 11 & 12  
LAS VEGAS, NV 89102  
TELEPHONE: 702-357-8717

WEB SITE: [WWW.THETUFIRM.COM](http://WWW.THETUFIRM.COM)  
TOLL FREE: 866-360-4LAW (4529)

October 31, 2019

Amazon.com Inc. Legal Department c/o Corporation Service Company 251 Little Falls Dr. Wilmington, DE 19808	President/CEO J/FIT.COM, LLC 11 Arcadia Way Columbia Falls, MT 59912	President/CEO Day 1 Fitness 11 Arcadia Way Columbia Falls, MT 59912
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AND THE PUBLIC PROSECUTORS LISTED ON THE DISTRIBUTION LIST ACCOMPANYING THE ATTACHED CERTIFICATE OF SERVICE

Re: Notice of Violation of California Health & Safety Code §25249.5, *et seq.*

To Whom It May Concern:

The Tu Firm, APLC ("Tu Firm") represents Ngoc Bich Vo ("Vo"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals in products sold in California and to improve human health by reducing hazardous substances contained in such items.

With respect to the product identified below, Ngoc Bich Vo has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at Cal. Health & Safety Code §25249.5, *et seq.* This violation has occurred and continues to occur because the alleged Violator(s) identified below failed to provide required clear and reasonable warnings with this product. Section 25249.6 of the statute 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 ..." Without proper warnings regarding the toxic effects of exposures to this listed chemical that results from contact with this product, California citizens lack the information necessary to make an informed decision on whether and/or how to eliminate (or reduce) their risk of exposure to the listed chemical from the reasonably foreseeable use of the product.

Please allow this letter to serve as notice of this violation to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, Tu Firm intends to file a private enforcement action on behalf of Ngoc Bich Vo sixty (60) days after effective service of this notice unless the public enforcement agencies' have commenced and are earnestly prosecuting an action to redress these violations.

<sup>1</sup> The public enforcement agencies that have been served with copies of this notice of violations are identified in the attached distribution list accompanying the Certificate of Service.

**Alleged Violator(s):** The name of the company's covered by this notice that Violated Proposition 65 (hereinafter "the Violators") are:

Amazon.com, Inc.  
FMS International LLC

**Product Cateory/Type:** The specific type of product causing this violation is:

<i>Product'</i>	<i>Retailer(s)</i>	<i>Manufacturer(s)/Distributor(s)</i>
Day 1 Fitness Neo Dumbbell 3 lb Pair SKU: 818020002870 Item# B07C377XRY  Amazon Order #: 112-3960574-7881013	Amazon.com Inc.	Day 1 Fitness J/FIT.COM, LLC

**Listed Chemicals:** This violation involves exposure to the chemicals Diisononyl phthalate (DINP) and Di-2-ethylhexyl phthalate (DEHP) also known as bis(2-ethylhexyl) phthalate or dioctyl phthalate (DOP). On December 20, 2013, the State of California listed Diisononyl phthalate (DINP) and Di-2-ethylhexyl phthalate (DEHP) also known as bis(2-ethylhexyl) phthalate or dioctyl phthalate (DOP), as chemicals known to cause cancer. This addition took place more than twelve (12) months before Vo served this notice.

**Violations:** The alleged Violators knowingly and intentionally have exposed and continue to knowingly and intentionally expose consumers within the State of California to Diisononyl phthalate (DINP) and Di-2-ethylhexyl phthalate (DEHP) also known as bis(2-ethylhexyl) phthalate or dioctyl phthalate (DOP) without providing clear and reasonable warning of this exposure. In particular, the product does not warn that it contains chemicals known to the State of California to cause cancer.

**Route of Exposure:** The exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of the product. Consequently, the primary route of exposure to these chemicals is through dermal exposure. Dermal exposure through direct contact with the user's hands is possible during application, removal, and manipulation of the **dumbbell**. When the user grips and uses the **dumbbell** for its intended purpose, dermal exposure is possible through exposed areas of the user's skin that are in contact with the **vinyl covering**. If the **dumbbell** is stored or transported in a carrier, DINP and DEHP that leaches from the product may contaminate other articles contained within these closed spaces are subsequently handled, worn, mouthed, or consumed. Finally, while mouthing of the product does not seem likely, some amount of exposure through ingestion can occur by handling the product with subsequent touching of the user's hand to mouth.

**Duration of the Violations:** Each of these ongoing violations has occurred on every day since at least October 9, 2019; as well as every day since the product was introduced to the California marketplace and following the one-year anniversary date of the listing at issue; and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is removed from the product.

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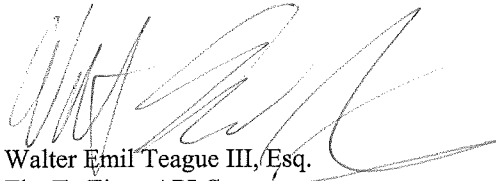
The specifically identified example of the type of product that is subject to this Notice is for the recipient's benefit to assist in its investigation of, among other things, the magnitude of potential exposures to the listed chemical from other items within the product category. It is important to 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." 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 were and are provided to California citizens prior to purchase.

Pursuant to Title 11, C.C.R. §3100, a certificate of merit is attached hereto. Pursuant to Title 27, C.C.R. §25903(b), a copy of "The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary" is also enclosed.

Consistent with the public interest goals of Proposition 65 and desire to have these ongoing violations of California law quickly rectified, Ngoc Bich Vo is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation.

Ngoc Bich Vo has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Respectfully,



Walter Emil Teague III, Esq.  
The Tu Firm, APLC

Attachments

Certificate of Merit

Certificate of Service


The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary

**CERTIFICATE OF MERIT**  
Health & Safety Code Section 25249.7(d)

I, Walter Emil Teague III, hereby declare:

- (1) This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice have violated Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
- (2) I am the attorney for the noticing party, Ngoc Bich Vo..
- (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 chemicals that are the subject of the 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 private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator(s) 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 & 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.

Dated: 10/31/2019

  
\_\_\_\_\_  
Walter Emil Teague III  
Attorney for Ngoc Bich Vo

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California, I am over the age of 18 and not the party to the within action; my business address is **16185 Brookhurst Street, Fountain Valley, CA 92708, Tel: 714-636-6030.**

On October 31, 2019 I served the foregoing documents described as:

**NOTICE OF VIOLATION, CERTIFICATE OF MERIT, CERTIFICATE OF SERVICE, and a copy of THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACTION OF 1986 (PROPOSITION 65): A SUMMARY**

  X   By placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Amazon.com Inc.  
Legal Department  
c/o Corporation Service Company  
251 Little Falls Dr.  
Wilmington, DE 19808

J/FIT.COM, LLC  
11 Arcadia Way  
Columbia Falls, MT 59912

Day 1 Fitness  
11 Arcadia Way  
Columbia Falls, MT 59912

AND each of the individuals on the service list attached hereto.

       By Facsimile:

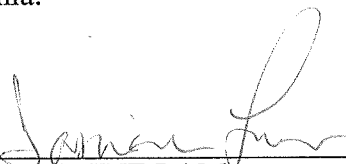
  X   (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Fountain Valley, California.

       (By Personal Service) I personally served such documents by hand.

  /   (By Certified Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Fountain Valley, CA to:

  X   (State) I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice mail would be deposited with the U.S. Postal Service on that same day with first class postage thereof fully prepaid at Fountain Valley, California in the ordinary course of business. I am aware that on motion of the party served service is presumed valid if postal meter cancellation date of postage meter date is more than one day after date of deposit for mailing in affidavit. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 31, 2019 at Fountain Valley, California.

  
\_\_\_\_\_  
JASMINE LAM

**SERVICE LIST ATTACHED**

District Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553

District Attorney  
Napa County  
1127 First Street, Suite C  
Napa, CA 94559

District Attorney  
Amador County  
708 Court St., Ste 202  
Jackson, CA 95642

District Attorney  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130

District Attorney  
Sonoma County  
600 Administration Drive, Rm. 212J  
Santa Rosa, CA 95403

District Attorney  
Butte County Administration Bldg.  
25 County Center Drive  
Oroville, CA 95965

District Attorney  
Santa Clara County  
70 West Hedding Street, West Wing  
San Jose, CA 95110

District Attorney  
Tulare County  
221 S. Mooney Avenue, Rm. 224  
Visalia, CA 93291

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

District Attorney  
Riverside County  
4075 Main Street  
Riverside, CA 92501

District Attorney  
Ventura County  
800 South Victoria Avenue  
Ventura, CA 93009

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

District Attorney  
Yolo County  
301 Second Street  
Woodland, CA 95695

District Attorney  
Sacramento County  
901 G Street  
Sacramento, CA 95814

District Attorney  
El Dorado County  
778 Pacific Street  
Placerville, CA 95667

District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940

District Attorney  
San Luis Obispo County  
County Gov't Center Annex, 4<sup>th</sup> Flr  
San Luis Obispo, CA 93408

District Attorney  
Fresno County  
2220 Tulare St., Ste. 1000  
Fresno, CA 93721

District Attorney  
San Joaquin County  
222 E. Weber Avenue, Room 202  
Stockton, CA 95202

District Attorney  
Santa Cruz County  
701 Ocean Street  
Santa Cruz, CA 95060

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

District Attorney  
Santa Barbara County  
1112 Santa Barbara Street  
Santa Barbara, CA 93101

District Attorney  
Alameda County  
7776 Oakport St., Ste. 650  
Oakland, CA 94621

District Attorney  
Humboldt County  
825 5<sup>th</sup> Street  
Eureka, CA 95501

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

District Attorney  
Calaveras County  
891 Mountain Ranch Road  
San Andreas, CA 95249

District Attorney  
Imperial County  
939 Main Street, Ste. 102  
El Centro, CA 92243

City Attorney  
City of San Diego  
1200 Third Ave., Suite 700  
San Diego, CA 92101

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

District Attorney  
Inyo County  
P. O. Drawer D  
Independence, CA 93526

District Attorney  
Kern County  
1215 Truxtun Avenue  
Bakersfield, CA 93301

District Attorney  
Mono County  
P. O. Box 617  
Bridgeport, CA 93559

District Attorney  
Sierra County  
100 Courthouse Square, 2<sup>nd</sup> Floor  
Downieville, CA 95936

District Attorney  
Kings County  
1400 West Lacey Blvd.  
Hanford, CA 93223

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

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

District Attorney  
Lake County  
255 N. Forbes Street  
Lakeport, CA 95453

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

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

District Attorney  
Los Angeles County  
211 W. Temple St., Ste. 1200  
Los Angeles, CA 90012-3210

District Attorney  
Placer County  
10810 Justice Center Drive, Ste. 240  
Roseville, CA 95678-6231

District Attorney  
Stanislaus County  
832 12<sup>th</sup> Street, Ste. 300  
Modesto, CA 95354

District Attorney  
Madera County  
209 West Yosemite Avenue  
Madera, CA 94903

District Attorney  
Plumes County  
520 Main Street, Rm. 404  
Quincy, CA 95971

District Attorney  
Sutter County  
446 Second Street  
Yuba City, CA 95991

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

District Attorney  
San Benito County  
419 Fourth Street, 2<sup>nd</sup> Floor  
Hollister, CA 95023

District Attorney  
Tehama County  
P. O. Box 519  
Red Bluff, CA 96080

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

District Attorney  
San Bernardino County  
316 N. Mountain View Avenue  
San Bernardino, CA 92415

District Attorney  
Trinity County  
P. O. Box 310; 11 Court St.  
Weaverville, CA 96093

District Attorney  
Mendocino County  
P. O. Box 1000  
Ukiah, CA 95482

District Attorney  
San Diego County  
330 West Broadway, Ste. 1300  
San Diego, CA 92101

District Attorney  
Tuolumne County  
423 N. Washington Street  
Sonora, CA 95370

District Attorney  
Merced County  
2222 "M" Street  
Merced, CA 95340

District Attorney  
San Mateo County  
400 County Center, 3<sup>rd</sup> Floor  
Redwood City, CA 94063

District Attorney  
Yuba County  
215 Fifth Street  
Marysville, CA 95901

District Attorney  
Modoc County  
204 S. Court Street, Rm. 202  
Alturas, CA 96101-4020

District Attorney  
Shasta County  
1355 West Street  
Redding, CA 96001

Los Angeles City Attorney  
200 N. Main Street, Rm. 800  
Los Angeles, CA 90012



San Jose City Attorney Office  
200 East Santa Clara Street  
San Jose, CA 95113

CA Atty General/ Prop. 65 Coordinator  
and Robert Thomas  
1515 Clay St, Ste. 2000;  
PO Box 70550  
Oakland, CA 94612-0550

District Attorney  
San Francisco County  
850 Bryant St., Room 322  
San Francisco, CA 0094103

District Attorney  
San Joaquin County  
222 East Weber Ave., Rm 202  
Stockton, CA 95201

District Attorney  
Santa Clara County  
70 West Hedding Street, West Wing  
San Jose, CA 95110

City Attorney  
City of Sacramento  
915 "I" Street, 4<sup>th</sup> Floor  
Sacramento, CA 95814-2608

CERTIFIED BELOW

Amazon.com, Inc.  
Legal Department  
C/O Corporation Service Company  
251 Little Falls Dr.  
Wilmington, DE 19808

J/FIT.COM, LLC  
11 Arcadia Way  
Columbia Falls, MT 59912

Day 1 Fitness  
11 Arcadia Way  
Columbia Falls, MT 59912

27 CCR Appendix A  
Appendix A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986  
(PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OE HHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. Please refer to the statute and OE HHA's implementing regulations (see citations below) for further information, FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 ([Health and Safety Code Sections 25249.5 through 25249.13](#)) is available online at: <http://oehha.ca.gov/prop65/law/P65Law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in [Title 27 of the California Code of Regulations, sections 25102 through 27001](#). These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Proposition 65 List." Under Proposition 65, the lead agency (OE HHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year; The current Proposition 65 list of chemicals is available on the OE HHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html). Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly say that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below. Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Periods. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "No Significant Risk Levels" (NSR Ls) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OE HHA's website at: [http://www.oehha.ca.gov/prop65/getNSR\\_Ls.html](http://www.oehha.ca.gov/prop65/getNSR_Ls.html) for a list of NSR Ls, and Section 25701 et seq. of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level" divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OE HHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 et seq. of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a "significant amount" of the listed chemical entering any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" level for chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if

one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

in exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;   
An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off- premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;

in exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;

in exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form

A private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties any reimbursement for costs and attorney's fees, if the notice was served on or after October 5, 2013, and the alleged violator has done all of the following within 14 days of being served notice:

corrected the alleged violation;

agreed to pay a civil penalty of \$500 (subject to change as noted below) to the private party within 30 days; and

notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private-party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city of greater than 750,000 population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private-party.

A copy of the notice of special compliance procedure and proof of compliance form is included with this notice and can be downloaded from OE H HA's website at: <http://oehha.ca.gov/prop65/law/p65law72003.html>. The notice is reproduced here:

Page 1

Date:

Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

#### SPECIAL COMPLIANCE PROCEDURE PROOF OF COMPLIANCE

You are receiving this form because the Noticing Party listed above has alleged that you are violating California Health and Safety Code 425249.6 (Prop 65).

The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:

1. You have actually taken the corrective steps that you have certified in this form
2. The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice
3. The Noticing Party receives the required \$500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.
4. This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.

#### PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY

The alleged violation is for an exposure to: (check one)

Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.

A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination.

Environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises.

Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

#### IMPORTANT NOTES:

1. You have no potential liability under California Health and Safety Code 425249.6 if your business has nine (9) or fewer employees.
2. Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.

Page 2

Date:

Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

#### PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE

Certification of Compliance

An accurate completion of this form will demonstrate that you are now in compliance with California Health and Safety Code 425249.6 for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of your receiving

this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the Noticing Party only and certify that I have complied with H ealth and Safety Code §25249.6 by (check only one of the following):

LA Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises;

*11* Posting *the* warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately its placement on my premises; OR

*11* Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

Certification

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

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Signature of alleged violator or authorized representative Date

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Name and title of signatory

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at [P65Public.Comments@oehha.ca.gov](mailto:P65Public.Comments@oehha.ca.gov).