

NOTICE OF VIOLATION

California Safe Drinking Water and Toxic Enforcement Act

N-Nitrosodiethylamine (NDEA) in Latex Resistance Bands

April 7, 2021

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. Kaya Allan Sugerman is the Illegal Toxic Threats Program Director of and a responsible individual within CEH.

Description of Violation:

- Violators: The names and addresses of the violators are: The names and addresses of the violators are identified on the attached Exhibit 1.
- Time Period of Exposure: The violations have been occurring since at least April 7, 2018 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 chemicals involved in these violations is n-nitrosodiethylamine ("NDEA").
- Type of Product: The specific type of product causing these violations is latex resistance bands used for exercise containing NDEA ("Latex Resistance Bands"). Non-exclusive examples of this specific type of product are identified on the attached Exhibit 1.
- Description of Exposure: This Notice addresses consumer exposures to NDEA in Latex Resistance Bands. Use of the products identified in this Notice results in human exposures to NDEA. The routes of exposure for the violations are: (1) dermal absorption directly through the skin when consumers touch or handle the products themselves during exercise; and (2) ingestion via hand to mouth contact after consumers touch or handle the products. No clear and reasonable warning

is provided with the Latex Workout Bands regarding the carcinogenic hazards of NDEA.

Resolution of Noticed Claims:

Based on the allegations set forth in this Notice, CEH intends to file a citizen enforcement lawsuit against each alleged violator unless such 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 NDEA 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 NDEA in Latex Resistance Bands; 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 NDEA in such products; and representative exemplars of each of the 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, Mark N. Todzo, at Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117, (415) 913-7800, mtodzo@lexlawgroup.com.

CERTIFICATE OF MERIT
Health & Safety Code § 25249.7(d)

I, Mark N. Todzo, 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.

April 7, 2021



Mark N. Todzo
Attorney for CENTER FOR
ENVIRONMENTAL HEALTH

EXHIBIT 1
April 7, 2021 Notice of Violation
NDEA in Latex Resistance Bands

Responsible Parties	Non-Exclusive Examples of the Products	Further Description of Non-Exclusive Exemplar Products
<p>Gaiam Americas, Inc. 601 W. 26th Street, 9th Floor New York, NY 10001</p> <p>Gaiam, Inc. 833 W. South Boulder Road, Louisville, CO 80027</p> <p>Fit for Life LLC 833 W South Boulder Rd., Suite G Louisville CO 80027-2452</p>	<p>Gaiam Restore Mini Band Kit (Set of 3)</p> <p>Fila Mini Loop Bands (Set of 3)</p>	<p>SKU 05-63404 UPC No. 018713-634047</p> <p>Product No. 1287-095682088-000599-13-2; 8786-8635-498151-81</p>
<p>Fila U.S.A., Inc. 14114 York Road P.O. Box 3000 Sparks, MD 21152-3000</p>	<p>Fila Mini Loop Bands (Set of 3)</p>	<p>Product No. 1287-095682088-000599-13-2; 8786-8635-498151-81</p>
<p>Evrholder Products, LLC 1500 S. Lewis St. Anaheim, CA 92805</p>	<p>Evrifit Loop Resistance Bands (Set of 3)</p>	<p>Product No. 87-8635-112168-000599-14-2</p>
<p>Endurance Brands Inc. 1312 Broadway, Suite 1512 New York, NY 10018</p> <p>Tjx Companies, Inc. 770 Cochituate Road Farmingham, MA 01701</p>	<p>Flo360 3 Pack Mini Bands</p> <p>Ultra Life Mini Bands (Set of 3)</p>	<p>Product No. 1287-097767204-000599-14-2; 8786-8635-551007-83</p> <p>Product No. 1287-097767587-000599-14-2; 8786-8635-551042-83</p>

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April 7, 2021 Notice of Violation
NDEA in Latex Resistance Bands

Responsible Parties	Non-Exclusive Examples of the Products	Further Description of Non-Exclusive Exemplar Products
Gymshark USA, Inc. 370 17 th Street Suite 3900 Denver, CO 80202	Gymshark 4LB to 25LB Resistance Band	UPC No. 5-057913-366209 Product No. GARB4085-BK-0S
Five Below, Inc. 701 Market Street Suite 300 Philadelphia PA 19106 1616 Holdings, Inc. 701 Market Street Suite 300 Philadelphia PA 19106	Series 8 Fitness Latex Band	UPC No. 8-10013-71267-4 Model #SA9154-091819-104 SKU No. 32546687 Tracking No. VP112019
Urban Outfitters Wholesale, Inc. 5000 South Broad Street Philadelphia, PA 19112	Bala Bands (Set of 5)	Product No. 60133279

1 **PROOF OF SERVICE**

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3 I, Owen Sutter, 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
osutter@lexlawgroup.com.

7 On April 7, 2021, I served the following document(s) on all interested parties in this
8 action by placing a true copy thereof in the manner and at the addresses indicated below:

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

11 **CERTIFICATE OF MERIT;** and

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

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

20 *Please see attached service list.*

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

24 Stacey Grassini, Deputy District Attorney
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26 900 Ward Street
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28 sgrassini@contracostada.org

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1	Phillip J. Cline, District Attorney Tulare County 221 S. Mooney Avenue, Rm. 224 Visalia, CA 93291 Prop65@co.tulare.ca.us	Tori Verber Salazar, District Attorney San Joaquin County 222 E. Weber Avenue, Room 202 Stockton, CA 95202 DAConsumer.Environmental@sjcda.org
4	Paul E. Zellerbach, District Attorney Riverside County 4075 Main Street Riverside, CA 92501 Prop65@rivcoda.org	Christopher Dalbey, Deputy District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101 DAProp65@co.santa-barbara.ca.us
7	Jeff W. Reisig, District Attorney Yolo County 301 Second Street Woodland, CA 95695 cfepd@yolocounty.org	Valery Lopez, Deputy City Attorney 1390 Market Street, 7 th Floor Valerie.lopez@sfcityatty.org San Francisco, CA 94102
10	Walter W. Hall, District Attorney Mariposa County P.O. Box 730 Mariposa, CA 95338 mcda@mariposacounty.org	Summer Stephan, District Attorney San Diego County 330 West Broadway San Diego, CA 92101 SanDiegoDAProp65@sdcca.org
13	Kimberly Lewis, District Attorney Merced County 550 West Main Street Merced, CA 95340 Prop65@countyofmerced.com	Mark Ankorn, Deputy City Attorney San Diego County 1200 Third Avenue San Diego, CA 92101 CityAttyProp65@sandiego.gov
16	Jeannine M. Pacioni, Deputy DA Monterey County 1200 Aguajito Road Monterey, CA 93940 Prop65DA@co.monterey.ca.us	Gregory D. Totten, District Attorney Ventura County 800 South Victoria Avenue Ventura, CA 93009 daspecialops@ventura.org
19	Clifford H. Newell, District Attorney Nevada County 201 Commercial Street Nevada City, CA 95959 DA.prop65@co.nevada.ca.us	Athea M. Sargeant, Assistant DA 350 Rhode Island Street San Francisco, CA 94103 Athea.sargeant@sfgov.org
22	Morgan Briggs Gire, District Attorney Placer County Roseville, CA 95678 Prop65@placer.ca.gov	Anne Marie Schubert, District Attorney Sacramento Country 901 G Street Sacramento, CA 95814 Prop65@sacda.org
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4 Nancy O'Malley, District Attorney
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6 7776 Oakport Street, Suite 650
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8 CEPDProp65@acgov.org

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

9 Executed on April 7, 2021 at San Francisco, California.

10
11 

12 Owen Sutter

SERVICE LIST

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District Attorney of Yuba County
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Los Angeles, CA 90012

San Jose City Attorney's Office
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San Jose, CA 95113

California Attorney General's Office
Attention: Proposition 65 Coordinator and
Robert Thomas
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