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BRODSKY & SMITH

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PENNSYLVANIA OFFICE
TWO BALA PLAZA, STE. 805
BALA CYNWYD, PA 19004
610.667.6200

March 17, 2022

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| President/CEO Liberty Procurement Co., Inc. c/o CT Corporation System 28 Liberty Street New York, NY 10005 | President/CEO Liberty Procurement Co., Inc. 650 Liberty Avenue Union, NJ 07083 |
| President/CEO Bed Bath & Beyond, Inc. c/o CT Corporation System 28 Liberty Street New York, NY 10005 | President/CEO Bed Bath & Beyond, Inc. c/o CT Corporation System 1999 Bryan Street, Suite 900 Dallas, TX 75201 |

60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act¹

To Whom It May Concern:

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

Brodsky & Smith ("Brodsky Smith") represents Ema Bell ("Bell"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals from use of consumer products sold in California and to improve human health and the environment by reducing hazardous substances.

With respect to the Product herein, Bell has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") codified at Cal. Health & Safety Code § 25249.5, et seq. This violation has occurred and continues to occur because the alleged Violator(s) failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in California. Health & Safety Code § 25249.6 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 the Listed Chemical resulting from use of the Product, California citizens lack the information necessary to make informed decisions on whether and/or how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

I. DESCRIPTION OF THE VIOLATION

¹ The public enforcement agencies that have been served with copies of this Notice are identified in the attached distribution list accompanying the Certificate of Service.

1. **Enforcer:** Ema Bell, 222 S. Figueroa St. Apt. 1212, Los Angeles, CA 90012-2581; (Ph) 424-332-3817.
2. **Alleged Violator(s):** Liberty Procurement Co., Inc.; Bed Bath & Beyond, Inc.
3. **Time Period of Exposure:** Violations have been occurring since at least March 17, 2022 and are continuing to this day.
4. **Listed Chemical:** Di(2-ethylhexyl) phthalate (DEHP). DEHP is listed under Proposition 65 as a chemical known to the State to cause cancer and reproductive toxicity.
5. **Product:**

| Product ² | Non- Exclusive Examples of the Product |
|----------------------|--|
| Stool | Counter Height Padded Stool UPC# 444600576259 |

6. **Description of Exposure:** The exposures that are the subject of this Notice result from the purchase, acquisition, handling and recommended use of the Product. The primary route of exposure to the Listed Chemical is through dermal absorption directly through the skin when consumers use, touch, or handle the Products. Some amount of exposure through ingestion can occur by touching the Product with subsequent touching of the user's hand to mouth. No clear and reasonable warning is provided with the Products regarding the health hazards of exposure to the Listed Chemical.

II. PROPOSITION 65 INFORMATION

For the Violators' reference, enclosed is a copy of "Proposition 65: A Summary" that has been prepared by the Office of Environmental Health Hazard Assessment ("OEHHA"). For more information concerning the provisions of Proposition 65, contact OEHHA at 916.445.6900.

III. RESOLUTION OF THE CLAIMS

Based on the allegations set forth in this Notice, Brodsky Smith intends to file a citizen enforcement lawsuit on behalf of Bell against the alleged Violator(s) unless such Violator(s) agree in a binding written agreement to: (1) recall Products already sold; (2) provide Proposition 65 compliant exposure warnings for Products sold in the future or reformulate the Products to eliminate exposures to the Listed Chemical; and (3) pay an appropriate civil penalty based on the factors enumerated in Health & Safety Code § 25249.7(b). Consistent with the public interest goals of Proposition 65 and the desire to have these violations of California law quickly rectified, Bell is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

² The specifically identified example of the Product in this Notice is to assist the recipients' investigation of, among other things, the magnitude of potential exposures to the Listed Chemical from other items within the definition of Products. This example is not intended to be an exhaustive or comprehensive identification of each specific offending Product. It is Bell's position that the alleged Violators are obligated to conduct a good faith investigation into other Products that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violators' custody or control) during the relevant period to ensure that requisite health hazard warnings were and are provided to California citizens prior to purchase and use.

Bell has retained me as legal counsel in connection with this Notice. Please direct all communications regarding this Notice to my attention at Brodsky & Smith, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212, (877) 534-2590, esmith@brodskysmith.com.

Sincerely,



Evan J. Smith

Attachments

Certificate of Merit

Certificate of Service

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

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within action. My business address is 2 Bala Plaza, Suite 805, Bala Cynwyd, Pennsylvania. I am employed in Montgomery County where the mailing occurred.

On March 17, 2022, I served the following documents: **Notice of Violation of California Health & Safety Code §25249.5, et seq.; Certificate of Merit; The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary** on the following entities and individuals listed below by placing a true and correct copy thereof in a sealed envelope, addressed to the person or entity listed below and depositing it in a US Postal Service Office with postage fully prepaid for delivery by Certified Mail:

| | |
|--|---|
| President/CEO Liberty Procurement Co., Inc. c/o CT Corporation System 28 Liberty Street New York, NY 10005 | President/CEO Liberty Procurement Co., Inc. 650 Liberty Avenue Union, NJ 07083 |
| President/CEO Bed Bath & Beyond, Inc. c/o CT Corporation System 28 Liberty Street New York, NY 10005 | President/CEO Bed Bath & Beyond, Inc. c/o CT Corporation System 1999 Bryan Street, Suite 900 Dallas, TX 75201 |

On March 17, 2022, I served the following documents: **Notice of Violation of California Health & Safety Code §25249.5, et seq.; Certificate of Merit; The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary** on each of the individuals on the service list attached hereto as Appendix B by placing a true and correct copy thereof in a sealed envelope, addressed to the person or entity listed below and depositing it in a US Postal Service Office with postage fully prepaid for delivery by Priority Mail.

Executed on March 17, 2022, in Bala Cynwyd, Pennsylvania.




Evan J. Smith

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

I, Evan J. Smith, 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, Ema Bell.
- (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: March 17, 2022



Evan J. Smith
Attorney for Ema Bell

SERVICE LIST

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| The Honorable Nancy O'Malley Alameda County District Attorney 1225 Fallon Street, Room 900 Oakland, CA 94612 | The Honorable Stacey Montgomery Lassen County District Attorney 220 South Lassen Street, Ste. 8 Susanville, CA 96130 | The Honorable Candice Hooper San Benito County District Attorney 419 4th Street, Second Floor Hollister, CA 95203 | The Honorable Gregg Cohen Tehama County District Attorney 444 Oak Street, Room L Red Bluff, CA 96080 |
| The Honorable Terese Drabec Alpine County District Attorney 270 Laramie Street, PO BOX 248 Markleeville, CA 96120 | The Honorable Jackie Lacey Los Angeles County District Attorney 211 West Temple Street, Suite 1200 Los Angeles, CA 90012 | The Honorable Michael Ramos San Bernardino County District Attorney 303 West 3rd Street, 8th Floor San Bernardino, CA 92415-0502 | The Honorable Eric Heryford Trinity County District Attorney P O Box 310 Weaverville, CA 96093 |
| The Honorable Todd Riebe Amador County District Attorney 708 Court Street Jackson, CA 95642 | The Honorable David Linn Madera County District Attorney 209 West Yosemite Avenue Madera, CA 93637 | The Honorable Bonnie Dumanis San Diego County District Attorney 330 W. Broadway Street San Diego, CA 92101 | The Honorable Tim Ward Tulare County District Attorney 221 South Mooney Boulevard, Rm 224 Visalia, CA 93291-4593 |
| The Honorable Michael Ramsay Butte County District Attorney 25 County Center Drive Oroville, CA 95965 | The Honorable Edward Berberian Marin County District Attorney 3501 Civic Center Drive, Room 130 San Rafael, CA 94903 | The Honorable George Gascon San Francisco County District Attorney 850 Bryant Street, Room 322 San Francisco, CA 94103 | The Honorable Laura Krieg Tuolumne County District Attorney 423 North Washington Street Sonora, CA 95370 |
| The Honorable Barbara Yook Calaveras County District Attorney 991 Mountain Ranch Road San Andreas, CA 95249 | The Honorable Thomas Cooke Mariposa County District Attorney 5101 Jones Street, P.O. Box 730 Mariposa, CA 95338 | The Honorable Tori Verber Salazar San Joaquin County District Attorney 222 East Weber Avenue, Room 202 Stockton, CA 95201 | The Honorable Gregory Totten Ventura County District Attorney 800 South Victoria Avenue Ventura, CA 93009 |
| The Honorable John Poyner Colusa County District Attorney 346 Fifth Street Colusa, CA 95932 | The Honorable C. David Eyster Mendocino County District Attorney 100 North State Street, P.O. Box 1000 Ukiah, CA 95482 | The Honorable Dan Dow San Luis Obispo County District Atty 1035 Palm Street, 4th Floor San Luis Obispo, CA 93408 | The Honorable Jeff Reisig Yolo County District Attorney 301 Second Street Woodland, CA 95695 |
| The Honorable Mark Peterson Contra Costa County District Attorney 900 Ward Street Martinez, CA 94553 | The Honorable Larry Morse II Merced County District Attorney 550 W. Main Street Merced, CA 95340 | The Honorable Stephen Wagstaife Santa Mateo County District Attorney 400 County Center, Third Floor Redwood City, CA 94063 | The Honorable Patrick McGrath Yuba County District Attorney 215 Fifth Street Marysville, CA 95901 |
| The Honorable Dale Trigg Del Norte County District Attorney 450 H Street, Room 171 Crescent City, CA 95531 | The Honorable Jordan Funk Modoc County District Attorney 204 S. Court Street, Suite 202 Alturas, CA 96101 | The Honorable Joyce Dudley Santa Barbara County District Attorney 1112 Santa Barbara Street Santa Barbara, CA 93101 | The Honorable Mike Feuer Office of the City Attorney, Los Angeles 800 City Hall East 200 North Main Street Los Angeles, CA 90012 |
| The Honorable Vern Pierson El Dorado County District Attorney 778 Pacific Street Placerville, CA 95667 | The Honorable Tim Kendall Mono County District Attorney P.O. Box 617 Bridgeport, CA 93517 | The Honorable Jeffrey Rosen Santa Clara County District Attorney 70 West Hedding Street, West Wing San Jose, CA 95110 | The Honorable James Sanchez Office of the City Attorney, Sacramento 915 I Street, 4th Floor Sacramento, CA 95814 |
| The Honorable Lisa Smiltcamp Fresno County District Attorney 2220 Tulara Street, #1000 Fresno, CA 93721 | The Honorable Dean Filppo Monterey County District Attorney P.O. Box 1131 Salinas, CA 93902 | The Honorable Jeff Rosell Santa Cruz County District Attorney 701 Ocean Street, Room 200 Santa Cruz, CA 95060 | The Honorable Jan Goldsmith Office of the City Attorney, San Diego 1200 Third Avenue, Suite 1620 San Diego, CA 92101 |
| The Honorable Dwayne Stewart Glenn County District Attorney P.O. Box 430 Willows, CA 95988 | The Honorable Allison Haley Napa County District Attorney 1127 First Street, Suite C Napa, CA 94559 | The Honorable Stephen Carlton Shasta County District Attorney 1355 West Street Redding, CA 96001 | The Honorable Dennis Herrera Office of the City Attorney, San Francisco 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102 |
| The Honorable Maggie Fleming Humboldt County District Attorney 825 5th Street, Fourth Floor Eureka, CA 95501 | The Honorable Clifford Newell Nevada County District Attorney 201 Commercial Street Nevada City, CA 95959 | The Honorable Lawrence Allen Sierra County District Attorney 100 Courthouse Square Downsville, CA 95936 | The Honorable Richard Doyle Office of the City Attorney, San Jose 200 East Santa Clara Street, 18th Floor San Jose, CA 95113 |
| The Honorable Gilbert Otero Imperial County District Attorney 940 West Main Street, Suite 102 El Centro, CA 92243 | The Honorable Tony Rackauckas Orange County District Attorney 401 Civic Center Drive West Santa Ana, CA 92701 | The Honorable James Kirk Andrus Siskiyou County District Attorney P.O. Box 986 Yreka, CA 96097 | Office of the California Attorney General Proposition 65 Enforcement Reporting ATTN: Prop 65 Coordinator 1515 Clay Street, Suite 2000 Oakland, CA 94612-0550 |
| The Honorable Thomas Hardy Inyo County District Attorney P.O. Drawer D Independence, CA 93526 | The Honorable R. Scott Owens Placer County District Attorney 10810 Justice Center Drive, Suite 240 Roseville, CA 95678 | The Honorable Krishna Abrams Solano County District Attorney 675 Texas Street, Suite 4500 Fairfield, CA 94533 | |
| The Honorable Lisa Green Kern County District Attorney 1215 Truxtun Avenue Bakersfield, CA 93301 | The Honorable David Hollister Plumas County District Attorney 520 Main Street, Room 404 Quincy, CA 95971 | The Honorable Jill Ravitch Sonoma County District Attorney 600 Administration Drive, Room 212J Santa Rosa, CA 95403 | |
| The Honorable Keith Fagundas Kings County District Attorney 1400 West Lacey Boulevard Hanford, CA 93230 | The Honorable Michael Hestrin Riverside County District Attorney 3960 Orange Street Riverside, CA 92501 | The Honorable Birgit Fladager Stanislaus County District Attorney 832 12th Street, Suite 300 Modesto, CA 95354 | |
| The Honorable Donald Anderson Lake County District Attorney 255 North Forbes Street Lakeport CA 95453 | The Honorable Anne Marie Schubert Sacramento County District Attorney 901 G Street Sacramento CA 95814 | The Honorable Amanda Hopper Sutter County District Attorney 463 Second Street, Suite 102 Yuba City CA 95991 | |