

## NOTICE OF VIOLATION

### California Safe Drinking Water and Toxic Enforcement Act

#### N-Nitrosodiethylamine (NDEA) in Latex Resistance Bands

October 6, 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 below:  
  
**RFE Sporting Goods, Inc.**  
715 Discovery Boulevard, Suite 313  
Cedar Park, TX 78613
- Time Period of Exposure: The violations have been occurring since at least October 6, 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. Non-exclusive examples of this specific type of product are identified below:  
  
Adidas Mini Bands (Set of 3); UPC No. 885652003636
- Description of Exposure: This Notice addresses consumer exposures to NDEA in Latex Resistance Bands. Use of the product 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 Resistance 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](mailto: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.

October 6, 2021



---

Mark N. Todzo  
Attorney for CENTER FOR  
ENVIRONMENTAL HEALTH

1 **PROOF OF SERVICE**

2

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  
apearson@lexlawgroup.com.

7 On October 6, 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  
25 Contra Costa County  
26 900 Ward Street  
27 Martinez, CA 94553  
28 sgrassini@contracostada.org

Bud Porter  
Supervising Deputy District Attorney  
Santa Clara County  
70 West Hedding Street, West Wing  
San Jose, CA 95110  
epu@da.sccgov.org

Thomas L. Hardy, District Attorney  
168 North Edwards Street  
Independence, CA 93526  
inyoda@inyocounty.us

Allison Haley, District Attorney  
Napa County  
1127 First Street, Suite C  
Napa, CA 94559  
CEPD@countyofnapa.org

Michelle Latimer, Program Coordinator  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
mlatimer@co.lassen.ca.us

Stephan R. Passalacqua, District Attorney  
Sonoma County  
600 Administration Drive, Rm. 212J  
Santa Rosa, CA 95403  
jbarnes@sonoma-county.org

1 Phillip J. Cline, District Attorney  
2 Tulare County  
3 221 S. Mooney Avenue, Rm. 224  
4 Visalia, CA 93291  
5 Prop65@co.tulare.ca.us  
6  
7 Paul E. Zellerbach, District Attorney  
8 Riverside County  
9 4075 Main Street  
10 Riverside, CA 92501  
11 Prop65@rivcoda.org  
12  
13 Jeff W. Reisig, District Attorney  
14 Yolo County  
15 301 Second Street  
16 Woodland, CA 95695  
17 cfepd@yolocounty.org  
18  
19 Walter W. Hall, District Attorney  
20 Mariposa County  
21 P.O. Box 730  
22 Mariposa, CA 95338  
23 mcda@mariposacounty.org  
24  
25 Kimberly Lewis, District Attorney  
26 Merced County  
27 550 West Main Street  
28 Merced, CA 95340  
Prop65@countyofmerced.com  
Jeannine M. Pacioni, Deputy DA  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
Prop65DA@co.monterey.ca.us  
Clifford H. Newell, District Attorney  
Nevada County  
201 Commercial Street  
Nevada City, CA 95959  
DA.prop65@co.nevada.ca.us  
Morgan Briggs Gire, District Attorney  
Placer County  
Roseville, CA 95678  
Prop65@placer.ca.gov  
David Hollister, District Attorney  
Plumas County  
520 Main Street  
Quincy, CA 95971  
davidhollister@countyofplumas.com

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

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

Valery Lopez, Deputy City Attorney  
1390 Market Street, 7<sup>th</sup> Floor  
Valerie.lopez@sfcityatty.org  
San Francisco, CA 94102

Summer Stephan, District Attorney  
San Diego County  
330 West Broadway  
San Diego, CA 92101  
SanDiegoDAProp65@sdcca.org

Mark Ankorn, Deputy City Attorney  
San Diego County  
1200 Third Avenue  
San Diego, CA 92101  
CityAttyProp65@sandiego.gov

Gregory D. Totten, District Attorney  
Ventura County  
800 South Victoria Avenue  
Ventura, CA 93009  
daspecialops@ventura.org

Athea M. Sargeant, Assistant DA  
350 Rhode Island Street  
San Francisco, CA 94103  
Athea.sargeant@sfgov.org

Anne Marie Schubert, District Attorney  
Sacramento Country  
901 G Street  
Sacramento, CA 95814  
Prop65@sacda.org

Eric J. Dobroth, Deputy District Attorney  
San Luis Obispo County  
County Government Center Annex, 4th  
Floor  
San Luis Obispo, CA 93408  
edobroth@co.slo.ca.us

1 Jeffrey S. Rosell, District Attorney  
2 Santa Cruz County  
3 701 Ocean Street  
4 Santa Cruz, CA 95060  
5 Prop65DA@santacruzcounty.us

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

4 Nancy O'Malley, District Attorney  
5 Alameda County  
6 7776 Oakport Street, Suite 650  
7 Oakland, CA 94621  
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 October 6, 2021 at San Francisco, California.

10 

11  
12 

---

Alexis Pearson

## **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  
25 County Center Drive  
Oroville, CA 95965

District Attorney of Colusa County  
346 Fifth Street, Suite 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 Street  
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  
Eureka, CA 95501

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

District Attorney of Kern County  
1215 Truxtun Avenue  
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  
Hall of Justice  
211 W. Temple Street, Ste. 1200  
Los Angeles, CA 90012-3210

District Attorney of Madera County  
209 West Yosemite Avenue  
Madera, CA 93637

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

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

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

District Attorney of Mono County  
P.O. Box 617  
Bridgeport, CA 93546

District Attorney of Orange County  
300 N Flower St.  
Santa Ana, CA 92703

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

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

District Attorney of San Mateo County  
400 County Center, 3<sup>rd</sup> 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., 2<sup>nd</sup> 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 of Stanislaus County  
832 12th Street, Ste. 300  
Modesto, CA 95354

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

District Attorney of Tehama County  
P.O. Box 519  
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 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

President or CEO\*  
RFE Sporting Goods, Inc.  
715 Discovery Boulevard, Ste. 313  
Cedar Park, TX 78613