

LAW OFFICES  
**BRODSKY & SMITH, LLC**

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240 MINEOLA BOULEVARD  
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TWO BALA PLAZA, STE. 805  
BALA CYNWYD, PA 19004  
610.667.6200

August 25, 2022

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| President/CEO/Owner<br>Comanche Moon<br>3666 Pringle Street<br>San Diego, CA 92110-1951                          | President/CEO<br>Nordstrom, Inc.<br>c/o Corporation Service Company<br>251 Little Falls Drive<br>Wilmington, DE 19808 |
| President/CEO<br>NIHC, Inc.<br>c/o Corporation Service Company<br>1900 W. Littleton Blvd.<br>Littleton, CO 80120 |   |

**60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act<sup>1</sup>**

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, LLC ("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**

<sup>1</sup> 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):** Comanche Moon; Nordstrom, Inc.; NIHC, Inc.
3. **Time Period of Exposure:** Violations have been occurring since at least August 25, 2022 and are continuing to this day.
4. **Listed Chemical:** Lead. Lead is listed under Proposition 65 as a chemical known to the State to cause cancer and reproductive toxicity.
5. **Product:**

| Product <sup>2</sup> | Non- Exclusive Examples of the Product  |
|----------------------|---|
| Planter              | Ceramic Cat Planter<br>UPC#792816731253 |

6. **Description of Exposure:** The exposures that are the subject of this Notice result from the purchase and recommended use of the Product. The primary route of exposure to the Listed Chemical is through ingestion and dermal absorption exposure. When used for its intended purpose, the Product will be in contact with foods. The Listed Chemical will leach into the foods it comes into contact with. When foods contaminated with the Listed Chemical are consumed, ingestion of the Listed Chemical will occur which will increase BLLs. 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.

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<sup>2</sup> 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, LLC, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212, (877) 534-2590, esmith@brodskysmith.com.**

Sincerely,



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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 August 25, 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/Owner<br>Comanche Moon<br>3666 Pringle Street<br>San Diego, CA 92110-1951                          | President/CEO<br>Nordstrom, Inc.<br>c/o Corporation Service Company<br>251 Little Falls Drive<br>Wilmington, DE 19808 |
| President/CEO<br>NIHC, Inc.<br>c/o Corporation Service Company<br>1900 W. Littleton Blvd.<br>Littleton, CO 80120 |   |

On August 25, 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 August 25, 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: August 25, 2022



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Evan J. Smith  
Attorney for Ema Bell

## SERVICE LIST

|  |  |   |
|--|--|---|
| The Honorable Michael Atwell<br>Alpine County District Attorney<br>P.O. Box 248<br>Markleeville, CA 96120                                  | The Honorable Jackie Lacey<br>Los Angeles County District Attorney<br>211 West Temple Street, Ste 1200<br>Los Angeles, CA, 90012   | The Honorable Todd Riebe<br>Amador County District Attorney<br>708 Court Street, #202<br>Jackson, CA 95642            |
| The Honorable Michael Ramsey<br>Butte County District Attorney<br>25 County Center Drive, Suite 245<br>Oroville, CA 95965                  | The Honorable Matthew R. Beauchamp<br>Colusa County District Attorney<br>346 5th Street, Suite 101<br>Colusa, CA 95932   | Del Norte County District Attorney<br>450 H street, Room 171<br>Crescent City, CA 95531                               |
| The Honorable Vern Pierson<br>El Dorado County District Attorney<br>778 Pacific Street<br>Placerville, CA 95667                            | The Honorable Gilbert Otero<br>Imperial County District Attorney<br>940 West Main Street, Suite 102<br>El Centro, CA 92243   | The Honorable Dwayne Stewart<br>Glenn County District Attorney<br>P.O. Box 430<br>Willows CA 95988                    |
| The Honorable Maggie Fleming<br>Humboldt County District Attorney<br>825 5 <sup>th</sup> Street, 4 <sup>th</sup> Floor<br>Eureka, CA 95501 | The Honorable Donald Anderson<br>Lake County District Attorney<br>255 N. Forbes Street<br>Lakeport, CA 95453   | The Honorable Lisa Green<br>Kern County District Attorney<br>1215 Truxtun Avenue<br>Bakersfield, CA 93301             |
| The Honorable Keith Fagundes<br>Kings County District Attorney 1400<br>West Lacey Blvd.<br>Hanford, CA 93230                               | The Honorable Mike Feuer<br>Office of the City Attorney, Los Angeles<br>Kames K. Hahn Hall East<br>200 North Main Street, 8 <sup>th</sup> Floor<br>Los Angeles, CA 90012 | The Honorable David Linn<br>Madera County District Attorney<br>209 West Yosemite Avenue<br>Madera, CA 93637           |
| The Honorable Edward Berberian<br>Marin County District Attorney<br>3501 Civic Center Drive, Room 130<br>San Rafael, CA 94903              | The Honorable Todd Spitzer<br>Orange County District Attorney<br>300 North Flower Street<br>Santa Ana, CA 92703  | The Honorable C. David Eyster<br>Mendocino County District Attorney<br>P.O. Box 1000<br>Ukiah, CA 9548                |
| The Honorable Birgit Fladager<br>Stanislaus County District Attorney<br>832 12th street, Suite 300<br>Modesto, CA 95353                    | The Honorable Candace Hooper<br>San Benito District Attorney<br>419 4th Street<br>Hollister, CA 95023  | The Honorable Tim Kendall<br>Mono County District Attorney<br>P.O. Box 2053<br>Mammoth Lakes, CA 93546                |
| The Honorable Stephen Wagstaffe<br>San Mateo County District Attorney<br>400 County Center, Third Floor<br>Redwood City, CA 94063          | The Honorable Michael Ramos<br>San Bernardino County District Attorney<br>303 W. Third Street<br>San Bernardino, CA 92415  | The Honorable Stephanie Bridgett<br>Shasta County District Attorney<br>1355 West Street<br>Redding, CA 96001          |
| The Honorable James Kirk Andrus<br>Siskiyou County District Attorney<br>P.O. Box 986<br>Redding, CA 96097                                  | The Honorable Krishna Abrams<br>Solano County District Attorney<br>675 Texas Street, Suite 4500<br>Fairfield, CA 94533   | The Honorable Amanda Hopper<br>Sutter County District Attorney<br>446 Second Street, Suite 102<br>Yuba City, CA 95991 |
| The Honorable Laura Krieg<br>Tuolumne County District Attorney<br>423 N. Washington Street<br>Sonora, CA 95370                             | The Honorable James Sanchez<br>Office of the City Attorney, Sacramento<br>915 I Street, 4 <sup>th</sup> Floor<br>Sacramento, CA 95814                                    | The Honorable Eric Heryford<br>Trinity County District Attorney<br>P.O. Box 310<br>Weaverville, CA 96093              |
| The Honorable Lawrence Allen<br>Sierra County District Attorney<br>100 Courthouse Square<br>Downieville, CA 95936                          | The Honorable Gregg Cohen<br>Tehama County District Attorney<br>P.O. Box 519<br>Red Bluff, CA 96080  | The Honorable Patrick McGrath<br>Yuba County District Attorney<br>215 Fifth street, Suite 152<br>Marysville, CA 95901 |
| The Honorable Jordan Funk<br>Modoc County District Attorney<br>204 S. Court Street Room 202<br>Alturas, CA 96101                           |  |   |

## ELECTRONIC MAIL SERVICE LIST

|   |  |   |
|---|--|---|
| The Honorable Nancy O'Malley<br>Alameda County District Attorney<br>7776 Oakport Street, Suite 650<br>Oakland, CA 94621<br>CEPDProp65@acgov.org | The Honorable Tori Verber Salzar<br>San Joaquin County District Attorney<br>222 E. Weber Avenue, Room 202<br>Stockton, CA 95202<br>DAConsumer.Environmental@sjcda.org            | Honorable Anne Marie Schubert<br>Sacramento County District Attorney<br>901 G Street<br>Sacramento, CA 95814<br>Prop65@sacda.org  |
| The Honorable Allison Haley<br>Napa County District Attorney<br>1127 First St., Suite C<br>Napa, CA 94559<br>CEPD@countyofnapa.org              | The Honorable Jeffrey S. Rosell<br>Santa Cruz County District Attorney<br>701 Ocean Street<br>Santa Cruz, CA 95060<br>Prop65DA@santacruzcounty.us                                | The Honorable Summer Stephan<br>San Diego County District Attorney<br>300 West Broadway<br>San Diego, CA 92101<br>SanDiegoDAProp65@sdcda.org                              |
| The Honorable Jeff W. Reisig<br>Yolo County District Attorney<br>301 Second Street<br>Woodland, CA 95695<br>efepd@yolocounty.org                | Michelle Latimer, Program Coordinator<br>Lassen County<br>220 S. Lassen Street<br>Susanville, CA 96130<br>mlatimer@co.lassen.ca.us   | Mark Ankorn, Deputy City Attorney<br>City of San Diego<br>1200 Third Avenue<br>San Diego, CA 92101<br>CityAttyProp65@sandiego.gov   |
| Bud Porter<br>Supervising Deputy District Attorney<br>Santa Clara County<br>70 W Hedding Street<br>San Jose, CA 95110<br>EPU@da.sccgov.org      | Alethea M. Sargent<br>Assistant District Attorney<br>San Francisco District Attorney's Office<br>350 Rhode Island Street<br>San Francisco, CA 94103<br>alethea.sargent@sfgov.org | Christopher Dalbey,<br>Deputy District Attorney<br>Santa Barbara County<br>1112 Santa Barbara Street<br>Santa Barbara, CA 93101<br>DAProp65@co.santa-barbara.ca.us        |
| The Honorable Gregory D. Totten,<br>Ventura County District Attorney<br>800 S Victoria Avenue<br>Ventura, CA 93009<br>daspecialops@ventura.org  | The Honorable Barbara Yook<br>Calaveras County District Attorney<br>891 Mountain Ranch Road<br>San Andreas, CA 95249<br>Prop65Env@co.calaveras.ca.us                             | Valerie Lopez, Deputy City Attorney<br>Office of the City Attorney<br>1390 Market Street, 7 <sup>th</sup> Floor<br>San Francisco, CA 94102<br>Valerie.Lopez@sfcityatt.org |
| Stacey Grassini<br>Deputy District Attorney<br>Contra Costa County<br>900 Ward Street<br>Martinez, CA 94553<br>sgrassini@contracostada.org      | Eric J. Dobroth<br>Deputy District Attorney<br>San Luis Obispo County<br>County Govt Center Annex, 4 <sup>th</sup> Floor<br>San Luis Obispo, CA 93408<br>edobroth@co.slo.ca.us   | Jeannine M. Pacioni<br>Deputy District Attorney<br>Monterey County<br>1200 Aguajito Road<br>Monterey, CA 93940<br>Prop65DA@co.monterey.ca.us                              |
| The Honorable Thomas Hardy<br>Inyo County District Attorney<br>168 N. Edwards Street<br>Independence, CA 93526<br>inyoda@inyocounty.us          | The Honorable Phillip J. Cline<br>Tulare County District Attorney<br>221 S Mooney Blvd<br>Visalia, CA 95370<br>Prop65@co.tulare.ca.us  | The Honorable Clifford Newell<br>Nevada County District Attorney<br>201 Commercial Street<br>Nevada City, CA 95959<br>DA.Prop65@co.nevada.ca.us                           |
| The Honorable Paul E. Zellerbach<br>Riverside County District Attorney<br>3072 Orange Street<br>Riverside, CA 92501<br>Prop65@rivcoda.org       | The Honorable Stephan Passalacqua<br>Sonoma County District Attorney<br>600 Administration Drive<br>Sonoma, CA 95403<br>jbarnes@sonoma-county.org                                | The Honorable David Hollister<br>Plumas County District Attorney<br>520 Main Street, Room 404<br>Quincy, CA 95971<br>davidhollister@countyofplumas.com                    |
| The Honorable Walter W. Wall<br>Mariposa County District Attorney<br>P.O. Box 730<br>Mariposa, CA 95338<br>mcd@mariposacounty.org               | The Honorable Kimberly Lewis<br>Merced County District Attorney<br>550 West Main Street<br>Merced, CA 95340<br>Prop65@countyofmerced.com   | The Honorable Morgan Briggs Gire<br>Placer County District Attorney<br>10810 Justice Center Drive<br>Roseville, CA 95678<br>prop65@placer.ca.gov                          |
| Nora V. Frimann, City Attorney<br>200 E. Santa Clara Street, 16th Floor<br>San Jose, CA 96113<br>Proposition65notices@sanjoseca.gov             | Lisa A. Smitcamp, District Attorney<br>2100 Tulare Street<br>Fresno, CA 93721<br>consumerprotection@fresnocountyca.gov   |   |

## ELECTRONIC UPLOAD SERVICE LIST

Office of the California Attorney General  
 Proposition 65 Enforcement Reporting  
 ATTN: Prop 65 Coordinator  
 P.O. Box 70550  
 Oakland, CA 94612-0550  
<https://oag.ca.gov/prop65/add-60-day-notice>