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BRODSKY & SMITH

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

October 7, 2022

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|---|---|
| Member/Manager Big Lots Stores, LLC c/o Corporation Service Company 3366 Riverside Drive, Suite 103 Upper Arlington, OH 43221 | Member/Manager Big Lots Stores, LLC c/o Corporation Service Company 251 Little Falls Drive Wilmington, DE 19808 |
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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 Gabriel Espinoza ("Espinoza"), 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, Espinoza 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. Enforcer:** Gabriel Espinoza, 3924 Carlin Ave., Lynwood, CA 90262-5204; (Ph) 424-285-4896.
- 2. Alleged Violator(s):** Big Lots Stores, LLC
- 3. Time Period of Exposure:** Violations have been occurring since at least October 7, 2022 and are continuing to this day.

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.

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:**

| Product² | Non- Exclusive Examples of the Product |
|----------------------------|---|
| Bypass Pruner | 24" Bypass Pruner UPC# 481055859506 |

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 Espinoza 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, Espinoza 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 Espinoza'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.

Espinoza 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 October 7, 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:

| | |
|---|---|
| Member/Manager Big Lots Stores, LLC c/o Corporation Service Company 3366 Riverside Drive, Suite 103 Upper Arlington, OH 43221 | Member/Manager Big Lots Stores, LLC c/o Corporation Service Company 251 Little Falls Drive Wilmington, DE 19808 |
|---|---|

On October 7, 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 October 7, 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, Gabriel Espinoza.
- (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: October 7, 2022



Evan J. Smith
Attorney for Gabriel Espinoza

SERVICE LIST

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

ELECTRONIC MAIL SERVICE LIST

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| The Honorable Nancy O'Malley Alameda County District Attorney 7776 Oakport Street, Suite 650 Oakland, CA 94621 CEPDPProp65@acgov.org | The Honorable Tori Verber Salzar San Joaquin County District Attorney 222 E. Weber Avenue, Room 202 Stockton, CA 95202 DAConsumer.Environmental@sjcda.org | Honorable Anne Marie Schubert Sacramento County District Attorney 901 G Street Sacramento, CA 95814 Prop65@sacda.org |
| The Honorable Allison Haley Napa County District Attorney 1127 First St., Suite C Napa, CA 94559 CEPD@countyofnapa.org | The Honorable Jeffrey S. Rosell Santa Cruz County District Attorney 701 Ocean Street Santa Cruz, CA 95060 Prop65DA@santacruzcounty.us | The Honorable Summer Stephan San Diego County District Attorney 300 West Broadway San Diego, CA 92101 SanDiegoDAProp65@sdcda.org |
| The Honorable Jeff W. Reisig Yolo County District Attorney 301 Second Street Woodland, CA 95695 efepd@yolocounty.org | Michelle Latimer, Program Coordinator Lassen County 220 S. Lassen Street Susanville, CA 96130 mlatimer@co.lassen.ca.us | Mark Ankorn, Deputy City Attorney City of San Diego 1200 Third Avenue San Diego, CA 92101 CityAttyProp65@sandiego.gov |
| Bud Porter Supervising Deputy District Attorney Santa Clara County 70 W Hedding Street San Jose, CA 95110 EPU@da.sccgov.org | Alethea M. Sargent Assistant District Attorney San Francisco District Attorney's Office 350 Rhode Island Street San Francisco, CA 94103 alethea.sargent@sfgov.org | Christopher Dalbey, Deputy District Attorney Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101 DAProp65@co.santa-barbara.ca.us |
| The Honorable Gregory D. Totten, Ventura County District Attorney 800 S Victoria Avenue Ventura, CA 93009 daspecialops@ventura.org | The Honorable Barbara Yook Calaveras County District Attorney 891 Mountain Ranch Road San Andreas, CA 95249 Prop65Env@co.calaveras.ca.us | Valerie Lopez, Deputy City Attorney Office of the City Attorney 1390 Market Street, 7 th Floor San Francisco, CA 94102 Valerie.Lopez@sfcityattorney.org |
| Stacey Grassini Deputy District Attorney Contra Costa County 900 Ward Street Martinez, CA 94553 sgrassini@contracostada.org | Eric J. Dobroth Deputy District Attorney San Luis Obispo County County Govt Center Annex, 4 th Floor San Luis Obispo, CA 93408 edobroth@co.slo.ca.us | Jeannine M. Pacioni Deputy District Attorney Monterey County 1200 Aguajito Road Monterey, CA 93940 Prop65DA@co.monterey.ca.us |
| The Honorable Thomas Hardy Inyo County District Attorney 168 N. Edwards Street Independence, CA 93526 inyoda@inyocounty.us | The Honorable Phillip J. Cline Tulare County District Attorney 221 S Mooney Blvd Visalia, CA 95370 Prop65@co.tulare.ca.us | The Honorable Clifford Newell Nevada County District Attorney 201 Commercial Street Nevada City, CA 95959 DA.Prop65@co.nevada.ca.us |
| The Honorable Paul E. Zellerbach Riverside County District Attorney 3072 Orange Street Riverside, CA 92501 Prop65@rivcoda.org | The Honorable Stephan Passalacqua Sonoma County District Attorney 600 Administration Drive Sonoma, CA 95403 jbarnes@sonoma-county.org | The Honorable David Hollister Plumas County District Attorney 520 Main Street, Room 404 Quincy, CA 95971 davidhollister@countyofplumas.com |
| The Honorable Walter W. Wall Mariposa County District Attorney P.O. Box 730 Mariposa, CA 95338 mca@mariposacounty.org | The Honorable Kimberly Lewis Merced County District Attorney 550 West Main Street Merced, CA 95340 Prop65@countyofmerced.com | The Honorable Morgan Briggs Gire Placer County District Attorney 10810 Justice Center Drive Roseville, CA 95678 prop65@placer.ca.gov |
| Nora V. Frimann, City Attorney 200 E. Santa Clara Street, 16th Floor San Jose, CA 96113 Proposition65notices@sanjoseca.gov | Lisa A. Smitcamp, District Attorney 2100 Tulare Street Fresno, CA 93721 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>