SUPPLEMENTAL 60-DAY NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE § 25249.7(d) (PROPOSITION 65)

Date: May 22, 2023
To: Mary Kellogg-Joslyn, President, Cedar Bay Entertainment LLC Josh Joslyn, President or Member, Titanic Tennessee, LLC California Attorney General's Office; District Attorney's Office for 58 Counties; and City Attorneys for San Francisco, San Diego, San Jose, Sacramento & Los Angeles
From: Center for Advanced Public Awareness

I. <u>INTRODUCTION</u>

Center for Advanced Public Awareness ("**CAPA**") is a non-profit organization in the State of California acting in the interest of the general public, pursuant to California Health & Safety Code § 25249.7(d). CAPA seeks to further: the elimination of toxic chemicals in the manufacture of consumer products; the improvement of human health through increased public awareness of toxic chemicals in consumer products; and the promotion of environmentally sound practices and corporate responsibility.

This Supplemental 60-Day Notice of Violation ("**Notice**") supplements the notice served on July 8, 2022 and is being provided to the alleged violators, Cedar Bay Entertainment LLC and Titanic Tennessee, LLC ("**Notice Recipients**"), as well as the California Attorney General's Office, the District Attorney's Offices for 58 Counties, and City Attorneys for San Francisco, San Diego, San Jose, Sacramento and Los Angeles.

CAPA provides this Notice after identifying violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986, codified at California Health & Safety Code § 25249.5 *et seq.* ("**Proposition 65**"), based on the failure to provide a clear and reasonable health hazard warning in connection with the sale or use of the products, listed below, in the State of California. The Notice Recipients are hereby given notice they violated and continue to violate Proposition 65 with respect to the warning requirement, codified at California's Health & Safety Code § 25249.6: "No 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 giving a clear and reasonable warning to such individual." Without proper warnings about the toxic effects of exposures to listed chemicals, citizens in California lack the information necessary to make an informed decision as to whether or how to eliminate or reduce their risk of exposure from the reasonably foreseeable use of products containing listed chemicals.

II. NATURE OF ALLEGED VIOLATIONS

<u>Product</u>. The specific type or category of products ("**Products**") that are the subject of this Notice are as follows:

Exemplar Product	Category/Type	Retailer	Manufacturer/Distributor
Embossed Black Mug, ZS-TITEM (1-100470)	Ceramic Mugs with Exterior Decoration	Titanic Museum Attraction (titanicattraction.com)	Cedar Bay Entertainment, LLC

Red White and Blue	Ceramic Mugs	Titanic Museum	Cedar Bay Entertainment,
Titanic Anchor Mug,	with Exterior	Attraction	LLC
1-100483,	Decoration	(titanicattraction.com)	
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Identified above are specific examples of Products recently purchased and witnessed as being available for sale or use in the State of California, within the *category* of offending products covered by this Notice. The identified retailers, manufacturers and/or distributors of the Products are based on publicly available information.

The Exemplar Products are identified for the Notice Recipients' benefit to assist in their investigation into the alleged violations that are the subject of this Notice. The specific identified Exemplar Products are not intended to be an exhaustive list of all such products potentially in violation of Proposition 65. It is CAPA's position the Notice Recipients are obligated to conduct a good faith investigation into other products within the category or of the type, identified above, that were manufactured, imported, sold or distributed for sale, or that have otherwise been in the Notice Recipients' custody or control during the relevant period, identified below, to ensure the requisite health hazard warnings are provided to individuals in California prior to purchase.

Listed Chemical. The chemical that is the subject of this Notice is the heavy metal, Lead. The State of California listed Lead as a chemical known to cause developmental toxicity, male reproductive toxicity, and female reproductive toxicity on February 27, 1987, and as a chemical known to cause cancer on October 1,1992.

Routes of Exposure. The exposures that are the subject of this Notice result from the purchase, acquisition and handling of Products containing Lead. Exposures occur when individuals, including children and women of childbearing age, handle, touch or otherwise utilize ceramic mugs with exterior decoration containing Lead in accordance with the Products' reasonably foreseeable and intended uses, resulting in exposures through ingestion and dermal absorption. Individuals ingest Lead when they touch or handle the Products, transferring the chemical from their fingers or hands to their mouths. Dermal absorption of Lead occurs when individuals handle, touch, or otherwise utilize the Products in accordance with their reasonably foreseeable and intended uses.

<u>Violations and Time Period of Exposure.</u> CAPA alleges the Notice Recipients knowingly and intentionally exposed, and continue to knowingly and intentionally expose, individuals within the State of California to Lead, without first providing a clear and reasonable health hazard warning regarding the chemical's toxic effects, as required by Proposition 65

Exposures caused by the use of the Products have occurred each day since the Products were introduced into the California marketplace, but, at a minimum, since July 8, 2021, and, potentially, as far back as July 8, 2019. Because the Products lack clear and reasonable warnings regarding the toxic effects of exposures to Lead, each Product sold during this period and not accompanied by a warning constitutes a violation by the Notice Recipients and/or other sellers of the Products whether sold directly, through retailers located in, or with locations in, California, via the internet, or through catalog purchases to customers and individuals located in California. Moreover, these exposures are ongoing and will continue either until clear and reasonable warnings are provided to protect consumers and users or until this known toxic chemical is removed from the Products or reduced to allowable levels.

III. <u>RESOLUTION OF NOTICED CLAIMS</u>

Consistent with the public interest goals of Proposition 65, CAPA seeks to pursue a constructive resolution of this matter to quickly rectify ongoing violations of California law. To that end, based on the allegations set forth in this Notice and pursuant to Health & Safety Code § 25249.7(d), CAPA intends to file a private enforcement action in the public interest sixty (60) days after effective service of this Notice, unless the appropriate public enforcement agencies have commenced and are diligently prosecuting an action to rectify these allegations. If the Notice Recipients seek to resolve the claims alleged in this Notice without litigation, they may contact CAPA's counsel at the address listed below.

It should be noted neither CAPA nor its counsel can: (1) finalize any settlement until after the expiration of the 60-day Notice period; or (2) speak for the California Attorney General or any District or City attorney in receipt of this Notice. Therefore, while reaching an agreement with CAPA will satisfy its claims, the agreement may not satisfy any public prosecutors.

IV. GENERAL INFORMATION AND SUMMARY OF PROPOSITION 65

A copy of a summary of Proposition 65's provisions, prepared by the Office of Environmental Health Hazard Assessment ("**OEHHA**") is enclosed with the copy of the Notice served on the Notice Recipients for their reference. For further general information concerning Proposition 65, contact OEHHA's Proposition 65 Implementation Office at (916) 445-6900.

V. <u>CERTIFICATE OF MERIT</u>

Pursuant to Health & Safety Code § 25249.7(d) and Cal. Code. Regs. tit 11, § 3100, a Certificate of Merit is attached hereto. A copy of the Notice and Certificate of Merit is served on the California Attorney General and marked "Attorney General Copy: Contains Official Information Pursuant to Evidence Code Section 1040" with all supporting documentation, as required by Cal. Code. Regs. tit 11, § 3102, attached thereto.

VI. <u>CONTACT INFORMATION</u>

Please direct all questions, issues or communications regarding this 60-Day Notice of Violation and its potential resolution to CAPA's counsel at the following address:

Center for Advanced Public Awareness c/o Laralei Paras, Esq. Seven Hills LLP 4 Embarcadero Center, Suite 1400 San Francisco, California 94111 Telephone: (415) 926-7247

<u>Attachments:</u> Certificate of Merit; Proof of Service; The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary (to Violator only); and Additional Confidential Supporting Information for Certificate of Merit (to AG only.)

CERTIFICATE OF MERIT

Health and Safety Code § 25249.7(d)

Re: Center for Advanced Public Awareness' Notice of Proposition 65 Violations

- I, Laralei Paras, hereby declare and certify:
- 1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code § 25249.6 by failing to provide clear and reasonable warnings.
- 2. I am an attorney for the noticing party.
- 3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies or other data regarding the alleged exposure to the listed chemical that is the subject of this notice.
- 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 noticing party's case can be established and the information did not prove that the alleged violator 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 the information identified in California Health & Safety Code § 25249.7(h)(2), i.e., 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: May 22, 2023

Laralei Paras

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury:

I am over the age of 18 years of age and not a party to this case. Seven Hills LLP business address is 4 Embarcadero Center, Suite 1400, San Francisco, CA 94111.

On May 22, 2023, I caused to be served the following:

SUPPLEMENTAL 60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(d);

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY; and

CERTIFICATE OF MERIT

XXXX by **Certified First Class Mail** through the United States Postal Service by placing true and correct copies of the above documents in a sealed envelope, individually addressed to each alleged violator listed below and providing such envelope to a United States Postal Service Representative:

Mary Kellogg-Joslyn, President Cedar Bay Entertainment LLC 714 State Highway 248, Suite 520 Branson, MO 65616

John Joslyn, Member or President Titanic Tennessee, LLC 2134 Parkway Pigeon Forge, TN 37863-2995 Corporation Service Company, Agt. Cedar Bay Entertainment, LLC 251 Little Falls Drive Wilmington, DE 19808

Corporation Service Company, Agt. Titanic Tennessee, LLC 2908 Poston Avenue Nashville, TN 37203-1312

On May 22, 2023, I caused to be served true and correct copies of the following documents:

SUPPLEMENTAL 60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(d); and

CERTIFICATE OF MERIT

XXXX by **First Class Mail** through the United States Postal Service by placing copies of the above documents in a sealed envelope, addressed to each entity on the attached "Service List" and providing such envelope to a United States Postal Representative, with correct postage.

XXXX via **Electronic Mail**, by sending copies of the above documents, addressed individually, to the Recipient listed on the attached "Electronic Mail Service List".

On May 22, 2023, I caused to be served true and correct copies of the following documents:

SUPPLEMENTAL 60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(d);

CERTIFICATE OF MERIT; and

CERTIFICATE OF MERIT ATTACHMENTS

XXXX via **Electronic Mail**, by uploading the documents, addressed to California Attorney General at their website address, listed under the "Electronic Upload Service List".

Executed on May 22, 2023 at Folsom, California.

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SERVICE LIST

The Honorable Michael Atwell	The Honorable Jackie Lacey	The Honorable Todd Riebe
Alpine County District Attorney	Los Angeles County District Attorney	Amador County District Attorney
P.O. Box 248	211 West Temple Street, Ste 1200	708 Court Street, #202
Markleeville, CA 96120	Los Angeles, CA, 90012	Jackson, CA 95642
The Honorable Michael Ramsey		Del Norte County District Attorney
Butte County District Attorney	Colusa County District Attorney	450 H street, Room 171
25 County Center Drive, Suite 245	346 5th Street, Suite 101	Crescent City, CA 95531
Oroville, CA 95965	Colusa, CA 95932	
The Honorable Vern Pierson	The Honorable Gilbert Otero	The Honorable Dwayne Stewart
	Imperial County District Attorney	Glenn County District Attorney
778 Pacific Street	940 West Main Street, Suite 102	P.O. Box 430
Placerville, CA 95667	El Centro, CA 92243	Willows CA 95988
The Honorable Maggie Fleming	The Honorable Donald Anderson	The Honorable Lisa Green
Humboldt County District Attorney	Lake County District Attorney	Kern County District Attorney
825 5 th Street, 4 th Floor	255 N. Forbes Street	1215 Truxtun Avenue
Eureka, CA 95501	Lakeport, CA 95453	Bakersfield, CA 93301
The Honorable Keith Fagundes	The Honorable Mike Feuer	The Honorable David Linn
Kings County District Attorney 1400	Office of the City Attorney, Los Angeles	Madera County District Attorney
West Lacey Blvd.	Kames K. Hahn Hall East	209 West Yosemite Avenue
Hanford, CA 93230	200 North Main Street, 8th Floor	Madera, CA 93637
	Los Angeles, CA 90012	
The Honorable Edward Berberian	The Honorable Todd Spitzer	The Honorable C. David Eyster
Marin County District Attorney	Orange County District Attorney	Mendocino County District Attorney
3501 Civic Center Drive, Room 130	300 North Flower Street	P.O. Box 1000
San Rafael, CA 94903	Santa Ana, CA 92703	Ukiah, CA 9548
The Honorable Birgit Fladager	The Honorable Candace Hooper	The Honorable Tim Kendall
Stanislaus County District Attorney	San Benito District Attorney	Mono County District Attorney
832 12th street, Suite 300	419 4th Street	P.O. Box 2053
Modesto, CA 95353	Hollister, CA 95023	Mammoth Lakes, CA 93546
The Honorable Stephen Wagstaffe	The Honorable Michael Ramos	The Honorable Stephanie Bridgett
San Mateo County District Attorney	San Bernardino County District Attorney	
400 County Center, Third Floor	303 W. Third Street	1355 West Street
Redwood City, CA 94063	San Bernardino, CA 92415	Redding, CA 96001
The Honorable James Kirk Andrus	The Honorable Krishna Abrams	The Honorable Amanda Hopper
Siskiyou County District Attorney	Solano County District Attorney	Sutter County District Attorney
P.O. Box 986	675 Texas Street, Suite 4500	446 Second Street, Suite 102
Redding, CA 96097	Fairfield, CA 94533	Yuba City, CA 95991
The Honorable Laura Krieg	The Honorable James Sanchez	The Honorable Eric Heryford
Tuolumne County District Attorney		Trinity County District Attorney
423 N. Washington Street	915 I Street, 4 th Floor	P.O. Box 310
Sonora, CA 95370	Sacramento, CA 95814	Weaverville, CA 96093
The Honorable Lawrence Allen	The Honorable Gregg Cohen	The Honorable Patrick McGrath
Sierra County District Attorney	Tehama County District Attorney	Yuba County District Attorney
100 Courthouse Square	P.O. Box 519	215 Fifth street, Suite 152
Downieville, CA 95936	Red Bluff, CA 96080	Marysville, CA 95901
The Honorable Jordan Funk		19101 yovinc, CA 93701
Modoc County District Attorney		
204 S. Court Street Room 202		
Alturas, CA 96101	l	

ELECTRONIC MAIL SERVICE LIST

Alameda County District Attorney San Joaquin County District Attorney Sacramento County District Attorney 776 Oakport Street, Suite 650 222. E. Weber Avenue, Room 202 901 G Street Sacramento, C.A. 95814 DAConsumer Environmental@sicda.org Prop5@sacda.org Data County District Attorney Santa Cruz County District Attorney San Diego Computer Stephan Napa County District Attorney Santa Cruz County District Attorney San Diego Computer Stephan Napa, CA. 94559 Santa Cruz, CA 95060 San Diego CAPUPO5@adda.org The Honorable Jeff W. Reisig Michelle Latimer, Program Coordinator Mark Ankcorn, Deputy City Attorney Yolo County District Attorney Sus Sanville, CA 96130 San Diego, CA 92101 Cepd@yolocounty.org mlatimer@co.lassen.eu.a.us City AttyProp5@sandiego.gov Bud Porter Alethea M. Sargent Christopher Dalbey, Supervising Deputy District Attorney San Francisco. District Attorney Santa Barbara County The Honorable Gregory D. Totten, The Inonorable Santa Barbara, CA 9310 Santa Barbara County Santa Francisco, CA 94103 Santa Barbara, CA 9310 The Honorable Gregory D. Totten, The Hononable Barbara Yook Henry Lifton, Dep			
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