

NOTICE OF VIOLATION

California Safe Drinking Water and Toxic Enforcement Act

Bisphenol A in Athletic Shorts Made Primarily of Polyester that also Contain Some Spandex

June 28, 2023

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:

- Violator: The names and addresses of the violators are identified on the attached Exhibit 1.
- Time Period of Exposure: The violations have been occurring since at least June 28, 2020 and are continuing to this day.
- 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 chemical involved in these violations is bisphenol A ("BPA"). Exposures to BPA occur from use of the products identified in this Notice.
- Type of Product: The specific type of product causing these violations is athletic shorts made primarily of polyester that also contain some spandex that are worn by females.
- Description of Exposure: This Notice addresses female exposures to BPA. Ordinary use of the products identified in this Notice results in human exposures to BPA. BPA is found in, and comes out of, the products. The routes of exposure for the violations are dermal absorption directly through the skin when

individuals wear the products, and ingestion via hand-to-mouth contact after individuals touch or handle the products. No clear and reasonable Proposition 65 warning is provided with these products regarding the presence of BPA in the products.

Resolution of Noticed Claims:

Based on the allegations set forth in this Notice, CEH intends to file a citizen enforcement lawsuit against the alleged violators unless such violators agree in a binding written instrument to: (1) recall products already sold or otherwise provided to consumers; (2) provide clear and reasonable warnings for products sold or otherwise provided to consumers in the future or reformulate such products to eliminate the BPA exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health and Safety Code Section 25249.7(b). If the alleged violators are 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 the alleged violators 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 BPA in athletic shorts made primarily of polyester that also contain some spandex worn by females; purchase and usage 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 BPA in such products; and representative exemplars of any such products provided to customers or consumers by the 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.

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 party identified in the notice has 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.

June 28, 2023



Mark N. Todzo
Attorney for CENTER FOR
ENVIRONMENTAL HEALTH

EXHIBIT 1
June 28, 2023 Notice of Violation
Bisphenol A in Athletic Shorts Made Primarily of Polyester that also Contain Some Spandex

Names and Addresses of Responsible Parties	Non-Exclusive Examples of the Products	Further Description of Non-Exclusive Exemplar
<p>Asics America Corporation 7755 Irvine Center Drive, Suite 400 Irvine, CA 92618</p>	<p>W 7in Knit Short</p>	<p>Color: 773, 2032A929, RN# 66200 CA# 04480, LAB4991124</p>
<p>Penney Opco LLC PO Box 10001 Dallas, TX 75301</p>	<p>Xersion 8" Bike Short, High-Rise Fitted</p>	<p>RN# 93677 Supplier# 74306-2, XS-00-567-A</p>
<p>Walmart Inc. 702 SW 8th St Bentonville, AR 72716</p>	<p>Athletic Works Bike Short, 7" Inseam</p>	<p>34000212, Green, 03-22 AW33100077292 WSDSC, RN# 52469</p>
<p>Deckers Outdoor Corporation 250 Coromar Dr Goleta, CA 93117</p>	<p>Hoka W Hupana 5" Short</p>	<p>1123732/CYC, RN#88276 ID#1123732</p>
<p>prAna Living, LLC 14375 NW Science Park Drive Portland, OR 97229</p> <p>Columbia Sportswear Company 14375 NW Science Park Drive Portland, OR 97229</p>	<p>prAna Electa Short II</p>	<p>Sage Camo, 1971401, RN124977, STYLE# 1971401, PO# 32311-00</p>
<p>New Balance Athletics, Inc. 100 Guest St Boston, MA 02135</p>	<p>New Balance RLNTLS Fit Short 5" Inseam</p>	<p>WS21182 BK L, RN#96937 CA#06054, SA RN#01759939</p>

1 **PROOF OF SERVICE**

2
3 I, Star Beltman, 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
7 sbeltman@lexlawgroup.com.

8 On June 28, 2023, I served the following document(s) on all interested parties in this
9 action by placing a true copy thereof in the manner and at the addresses indicated below:

10 **NOTICE OF VIOLATION OF CALIFORNIA SAFE DRINKING WATER AND
11 TOXIC ENFORCEMENT ACT;**

12 **CERTIFICATE OF MERIT;** and

13 **THE SAFE DRINKING AND TOXIC ENFORCEMENT ACT OF 1986
14 (PROPOSITION 65): A SUMMARY** (only sent to those on service list marked with an
15 asterisk).

16 **BY MAIL:** I am readily familiar with the firm’s practice for collecting and processing mail
17 with the United States Postal Service (“USPS”). Under that practice, mail would be deposited
18 with USPS that same day with postage thereon fully prepaid at San Francisco, California in the
19 ordinary course of business. On this date, I placed sealed envelopes containing the above
20 mentioned documents for collection and mailing following my firm’s ordinary business practices.

21 *Please see attached service list.*

22 **BY ELECTRONIC MAIL:** I transmitted a PDF version of the document(s) listed above via
23 email to the email address(es) indicated on the attached service list [or noted above] before 5 p.m.
24 on the date executed.

25 Stacey Grassini, Deputy District Attorney
26 Contra Costa County
27 900 Ward Street
28 Martinez, CA 94553
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

Nora V. Frimann, City Attorney
200 E. Santa Clara Street, 16th Floor
San Jose, CA 96113
Proposition65notices@sanjoseca.gov

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

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

1 Stephan R. Passalacqua, District Attorney
2 Sonoma County
3 600 Administration Drive, Rm. 212J
4 Santa Rosa, CA 95403
5 jbarnes@sonoma-county.org

4 Phillip J. Cline, District Attorney
5 Tulare County
6 221 S. Mooney Avenue, Rm. 224
7 Visalia, CA 93291
8 Prop65@co.tulare.ca.us

7 Paul E. Zellerbach, District Attorney
8 Riverside County
9 4075 Main Street
10 Riverside, CA 92501
11 Prop65@rivcoda.org

11 Jeff W. Reisig, District Attorney
12 Yolo County
13 301 Second Street
14 Woodland, CA 95695
15 cfepd@yolocounty.org

14 Walter W. Hall, District Attorney
15 Mariposa County
16 P.O. Box 730
17 Mariposa, CA 95338
18 mcda@mariposacounty.org

17 Kimberly Lewis, District Attorney
18 Merced County
19 550 West Main Street
20 Merced, CA 95340
21 Prop65@countyofmerced.com

20 Jeannine M. Pacioni, Deputy DA
21 Monterey County
22 1200 Aguajito Road
23 Monterey, CA 93940
24 Prop65DA@co.monterey.ca.us

23 Clifford H. Newell, District Attorney
24 Nevada County
25 201 Commercial Street
26 Nevada City, CA 95959
27 DA.prop65@co.nevada.ca.us

26 Morgan Briggs Gire, District Attorney
27 Placer County
28 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, 7th Floor
Valerie.lopez@sfcityatty.org
San Francisco, CA 94102

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

Mark Ankcorn, 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

Alexandra Grayner, Assistant District
Attorney
350 Rhode Island Street
San Francisco, CA 94103
alexandra.grayner@sfgov.org

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Jeffrey S. Rosell, District Attorney
Santa Cruz County
701 Ocean Street
Santa Cruz, CA 95060
Prop65DA@santacruzcounty.us

Lisa A. Smittcamp, District Attorney
2100 Tulare Street
Fresno, CA 93721
Phone: (559) 600-3141
consumerprotection@fresnocountyca.gov

Nancy O'Malley, District Attorney
Alameda County
7776 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 28, 2023 at San Francisco, California.



Star Beltman

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 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, 2nd 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, 3rd 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., 2nd 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

Richard Sullivan, CEO*
Asics America Corporation
7755 Irvine Center Drive, Suite 400
Irvine, CA 92618

Marc Rosen, President/CEO*
Penney Opco LLC
PO Box 10001
Dallas, TX 75301

Doug McMillon, President/CEO*
Walmart Inc.
702 SW 8th St
Bentonville, AR 72716

Dave Powers, President/CEO*
Deckers Outdoor Corporation
250 Coromar Dr
Goleta, CA 93117

Timothy Boyle, CEO*
Columbia Sportswear Company
14375 NW Science Park Drive
Portland, OR 97229

Monica Mirro, President*
prAna Living, LLC
14375 NW Science Park Drive
Portland, OR 97229

Joseph Preston, CEO*
New Balance Athletics, Inc.
100 Guest St
Boston, MA 02135