



**TODD T. CARDIFF, Esq.**  
ATTORNEY AT LAW

1901 FIRST AVENUE  
SUITE 219  
SAN DIEGO CA  
92101

T 619 546 5123  
F 619 546 5133

todd@tcardifflaw.com

July 12, 2023

**VIA CERTIFIED MAIL**

Essex Property Trust, Inc.  
1100 Park Place, Suite 200  
San Mateo, CA 94403

Playa Capital Company, LLC  
3200 Park Center Drive, Suite 1000  
Costa Mesa, CA 92626

Richard A. Muench, Esq.  
Jennifer M. Porche, Esq.  
Gates, Gonter, Guy, Proudfoot and Muench, LLP  
38 Discovery, Suite 200  
Irvine, CA 92618

**VIA U.S. MAIL**

Los Angeles County District Attorney  
211 West Temple Street  
Suite 1200  
Los Angeles, CA 90012

Los Angeles Office of the City Attorney, Los Angeles  
800 City Hall East  
200 North Main Street  
Los Angeles. CA 90012

**VIA ELECTRONIC FILING**

State of California Department of Justice  
Office of the Attorney General  
Filing link: [oag.ca.gov/prop65/add-60-day-notice](https://oag.ca.gov/prop65/add-60-day-notice)

**Re: 60-Day Notice of Intent to Sue for Violations of the Safe Drinking Water and Toxic Enforcement Act of 1986**

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I represent both Grassroots Coalition (“**Grassroots**”), a non-profit environmental group, and Shontel Johnson (“**Johnson**”), a tenant at the Fountain Park Apartments at Playa Vista.

Through this Notice of Violation (this “**Notice**”), Grassroots and Johnson are acting in the public interest pursuant to Proposition 65 and seek to reduce and/or



Essex Property Trust et. al.

Re: **60-Day Notice of Intent to Sue**

July 12, 2023

Page 2 of 4

---

eliminate exposures to toxic chemicals, including BTEX compounds (**benzene, toluene, ethylbenzene, and xylene**) by consumers, workers, and visitors from exposure by means of a defective methane mitigation detection system manufactured, produced, distributed, and/or operated through Playa Capital Company, LLC, and Essex Property Trust, Inc. (collectively, the “**Noticed Parties**”).

This Notice constitutes written notification that the Noticed Parties, by means of the Fountain Park Apartments at Playa Vista located at 13151 FOUNTAIN PARK DR, LOS ANGELES, CA 90094 (Mailing Address), have violated Proposition 65, the Safe Drinking Water and Toxic Enforcement Act ([Health and Safety Code 25249.5 et seq.](#)) The population exposed include the residents, visitors and employees at the Fountain Park Apartments, including 13175 Fountain Park Drive (Building A), 13165 Fountain Park Drive (Building B), 13163 Fountain Park Drive (Building C), 5389 Play Vista Drive (Building D), 5399 Playa Vista Drive (Building E). (Collectively Fountain Park Apartments.)

Playa Capital LLC, the developer and/or owner of Fountain Park Apartments, constructed the Fountain Park Apartments on an active methane seep. As part of the approval process, Playa Capital was required to design and construct a methane mitigation system called the Playa Vista Phase I Methane Prevention, Detection and Monitoring program, which included impervious methane barriers, 50-foot gravel vent wells, dewatering pumps, and methane alarms. In addition, the owner/manager was required to submit monthly reports, and follow emergency procedures designed by the Los Angeles Fire Chief/Department to keep the residents and occupants in the apartments safe. These requirements have not been complied with and the mitigation has been ineffective.

Aside from the well-known explosive nature of methane, studies have shown the venting methane will carry BTEX and Hydrogen Sulfide gases, particularly in the area with the greatest concentration of methane. The Noticed Parties have failed to properly maintain and comply with the Methane Mitigation requirements imposed by the City of Los Angeles, not only endangering the population with potentially explosive conditions, but failing to notify them that the alarms that go off numerous times of year are methane alarms (NOT malfunctioning fire alarms). The failure to notice the residents, visitors and employees is not only a violation of Proposition 65 but constitutes an unfair business practice under Business and Professions Code § 17200 and potentially constitutes fraud on a large number of tenants. It is alleged on information and belief that the Fountain Park apartments, collectively, has 700 units, and averages two tenants per unit.



Because of the ongoing and malfunctioning methane mitigation systems, and the lack of notice to the tenants and public, the Noticed Parties have exposed and continue to expose numerous residents, individuals, and visitors within the residential property to BTEX compounds (**benzene, toluene, ethylbenzene, and xylene**). Such exposure can cause cancer, birth defects, and reproductive harm. Chemicals subject to Proposition 65 are listed as carcinogens on:

- **BENZENE** was listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer on February 27, 1987, and reproductive toxicity on December 26, 1997.
- **TOLUENE** was listed pursuant to Proposition 65 as a chemical known to the State of California to cause developmental toxicity on December 26, 1997.
- **ETHYLBENZENE** was listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer on June 11, 2004.
- **XYLENE** was listed pursuant to Proposition 65 by the Office of Environmental Health Hazard Assessment's (OEHHA) Reproductive and Cancer Hazard Assessment Branch as a chemical known to the State of California to cause cancer in September 2012.

Exposures to the listed chemicals have been occurring without the “clear and reasonable” warnings required by Proposition 65, dating at least as far back as 2003, and has continued to the present. The routes of exposure for these chemicals are inhalation, ingestion, and dermal absorption.

In the course of doing business, the Noticed Parties are knowingly and intentionally exposing people to the chemicals which have been designated by the state to cause cancer without first giving clear and reasonable warning to such persons ([Health and Safety Code 25249.6](#)).

Proposition 65 requires that notice and intent to sue be given to a violator 60 days before the suit is filed. With this letter, Grassroots and Johnson give notice of the alleged violation to the Noticed Parties and the appropriate public enforcement agencies. This Notice covers all violations of Proposition 65 that are currently known to Grassroots Coalition and Johnson from information now available to us.

With the copy of this Notice submitted to the Noticed Parties, a copy is provided of “The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary, referenced as Appendix A”, and Appendix “B” — “The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): Special Compliance Procedure”.




Essex Property Trust et. al.  
Re: **60-Day Notice of Intent to Sue**  
July 12, 2023  
Page 4 of 4

---

Grassroots and Johnson are interested in a prompt resolution of this matter with an enforceable written agreement by the Noticed Parties to (1) repair or replace the defective methane mitigation detection system; (2) eliminate or reduce the **benzene, toluene, ethylbenzene, and xylene** to allowable levels; (3) provide appropriate warning labels on the methane mitigation and detection system alarm boxes in each residential unit at the Fountain Park Apartments at Playa Vista; (4) list the name of at least one chemical that prompted the Proposition 65 warning as required by the new regulations, adopted in August 2016; and (5) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures and expensive and time-consuming litigation.

If you have any questions, please direct all communications regarding this Notice to my office on behalf of Grassroots Coalition and Shontel Johnson.

Sincerely,  
  
Todd T. Cardiff, Esq.

Attachments:

Appendix “A” — “The Safe Drinking Water and Toxic Enforcement act of 1986 (Proposition 65): A Summary, referenced as Appendix A.”

Appendix “B” — “The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): Special Compliance Procedure”



## APPENDIX A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

***The "Proposition 65 List."*** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to

---

<sup>1</sup> All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

***Clear and reasonable warnings.*** A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

***Prohibition from discharges into drinking water.*** A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

#### ***DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?***

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

***Grace Period.*** Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

***Governmental agencies and public water utilities.*** All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

***Businesses with nine or fewer employees.*** Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

**Exposures that pose no significant risk of cancer.** For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific “No Significant Risk Levels” (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

**Exposures that will produce no observable reproductive effect at 1,000 times the level in question.** For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level” divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

**Exposures to Naturally Occurring Chemicals in Food.** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

**Discharges that do not result in a “significant amount” of the listed chemical entering any source of drinking water.** The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” level for chemicals that cause cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

---

<sup>2</sup> See Section 25501(a)(4).



## *HOW IS PROPOSITION 65 ENFORCED?*

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at:  
<http://oehha.ca.gov/prop65/law/p65law72003.html>.

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...*

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at [P65Public.Comments@oehha.ca.gov](mailto:P65Public.Comments@oehha.ca.gov).

Revised: May 2017

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

## APPENDIX B

## APPENDIX B

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

#### THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): SPECIAL COMPLIANCE PROCEDURE

This Appendix B contains the notice of special compliance procedure and proof of compliance form prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). Under the Act, a private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. These exposures are:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

A private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties any reimbursement for costs and attorney's fees, if the alleged violator has done *all* of the following within 14 days of being served notice:

- Corrected the alleged violation;
- Agreed to pay a civil penalty of \$500 (subject to change in 2019 and every five years thereafter) to the private party within 30 days; and

- Notified the private party serving the notice in writing that the violation has been corrected.

An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city of greater than 750,000 population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator.

When a private party sends a notice of alleged violation that alleges one or more of the exposures listed above, the notice must include a notice of special compliance procedure, and a proof of compliance form to be completed by the alleged violator as directed in the notice.

The notice and proof of compliance form is reproduced here:

Date:

Page 1

Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

**SPECIAL COMPLIANCE PROCEDURE**  
**PROOF OF COMPLIANCE**

You are receiving this form because the Noticing Party listed above has alleged that you are violating California Health and Safety Code §25249.6 (Prop. 65).

**The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:**

**(1) You have actually taken the corrective steps that you have certified in this form.**

**(2) The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice.**

**(3) The Noticing Party receives the required \$500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.**

**(4) This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.**

**PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY**

The alleged violation is for an exposure to: (check one)

\_\_\_Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.

\_\_\_A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination.

\_\_\_Environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises.

\_\_\_Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

**IMPORTANT NOTES:**

(1) You have no potential liability under California Health and Safety Code §25249.6 if your business has nine (9) or fewer employees.

(2) Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.

Date:

Page 2

Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

**PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE**

**Certification of Compliance**

Accurate completion of this form will demonstrate that you are now in compliance with California Health and Safety Code §25249.6 for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):

Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises;

Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately showing its placement on my premises; OR

Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

### **Certification**

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

\_\_\_\_\_  
Signature of alleged violator or authorized representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name and title of signatory

### *FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...*

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at [P65Public.Comments@oehha.ca.gov](mailto:P65Public.Comments@oehha.ca.gov).

Revised: May 2017

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.