

## NOTICE OF VIOLATION

### California Safe Drinking Water and Toxic Enforcement Act

Bisphenol A in Sports Bras Made Primarily of Polyester That Also Contain Some Spandex (or Other Brand of Elastane)

August 3, 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 August 3, 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 Sports Bras made primarily of polyester that also contain some spandex (or other brand of elastane) 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 Sports Bras made primarily of polyester that also contain some spandex (or other brand of Elastane) 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](mailto: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.

August 3, 2023



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Mark N. Todzo  
Attorney for CENTER FOR  
ENVIRONMENTAL HEALTH

**EXHIBIT 1**  
**August 3, 2023 Notice of Violation**  
**Bisphenol A in Sports Bras Made Primarily of Polyester That Also Contain Some**  
**Spandex (or Other Brand of Elastane)**

<b>Names and Addresses of Responsible Parties</b>	<b>Non-Exclusive Examples of the Products</b>	<b>Further Description of Non-Exclusive Exemplar</b>
<p><b>American Eagle Outfitters, Inc.</b>  77 Hot Metal Street  Pittsburg, PA 15203</p> <p><b>AEO Management Co.</b>  77 Hot Metal Street  Pittsburg, PA 15203</p>	<p>Offline By Aerie, The Hugger Longline Racerback Sports Bra</p>	<p>RN 54485 CA 03873,  2411228366 03/22 1214</p>

1 **PROOF OF SERVICE**

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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 August 3, 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  
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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  
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6 221 S. Mooney Avenue, Rm. 224  
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9 4075 Main Street  
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12 Yolo County  
13 301 Second Street  
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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  
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David Hollister, District Attorney  
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6 edobroth@co.slo.ca.us

7 Jeffrey S. Rosell, District Attorney  
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9 701 Ocean Street  
10 Santa Cruz, CA 95060  
11 Prop65DA@santacruzcounty.us

12 Lisa A. Smittcamp, District Attorney  
13 2100 Tulare Street  
14 Fresno, CA 93721  
15 Phone: (559) 600-3141  
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Nancy O'Malley, District Attorney  
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Barbara Yook, District Attorney  
Calaveras County  
891 Mountain Ranch Road  
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Prop65Env@co.calaveras.ca.us

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

19 Executed on August 3, 2023 at San Francisco, California.

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Star Beltman

## SERVICE LIST

District Attorney of Alpine County  
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