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**SETTLEMENT AGREEMENT**

**1. PARTIES**

1.1 The parties to this Settlement Agreement (“Agreement”) are Consumer Advocacy Group, Inc. (“CAG”) and Bond Manufacturing Company (“Bond”). CAG and Bond are referred to collectively as the “Parties” and each of them as a “Party.”

1.2 CAG is an organization with its principal place of business in California, acting as a citizen enforcer of California Health and Safety Code § 25249.5 *et seq.* (“Proposition 65”).

1.3 Bond is a California corporation employing ten (10) or more persons and, for the purpose of Proposition 65, is a person doing business in California.

**2. ALLEGATIONS**

2.1 On or about March 2, 2015, CAG served a 60-Day Notice of Violation under Proposition 65 to Bond, Ross Dress for Less, Inc., Ross Stores, Ross Stores, Inc., and Ross Dress for Less, Inc. (the Ross entities collectively referred to herein as “Ross”), and to the California Attorney General, County District Attorneys, and City Attorneys for each California city containing a population of at least 750,000 people in whose jurisdictions the alleged violations allegedly occurred (“March 2 Notice”). The March 2 Notice alleged that the noticed parties caused consumer product and occupational exposures in violation of Proposition 65 by producing or making available hand tool products containing Di (2-ethylhexyl) phthalate (“DEHP”), including Bond Drop Forged Pruner Set, ¾ in., #3108, UPC # 0 35355 03108 9.

2.2 On or about August 21, 2015, CAG served a 60-Day Notice of Violation under Proposition 65 to the Black & Decker Corporation, Stanley Black & Decker, Inc. (the Black & Decker entities collectively referred to herein as “Black & Decker”), Ross, and to the California Attorney General, County District Attorneys, and City Attorneys for each California city containing a population of at least 750,000 people in whose jurisdictions the alleged violations allegedly occurred (“August 21 Notice”). The August 21 Notice alleged that the noticed parties caused consumer product and occupational exposures in violation of Proposition 65 by producing or making available hand tool products containing Di Isononyl Phthalate (“DINP”),

1 including Black & Decker 8” Pruner with black polymer coated grip, tag with “Ross Reduced  
2 Original,” 400117216781, DV0 D2086 C 6656. The Black & Decker 8” Pruner was supplied by  
3 Bond.

4 2.3 On or about October 13, 2015, CAG served a 60-Day Notice of Violation under  
5 Proposition 65 to Bond and Grocery Outlet, Inc., and to the California Attorney General, County  
6 District Attorneys, and City Attorneys for each California city containing a population of at least  
7 750,000 people in whose jurisdictions the alleged violations allegedly occurred (“October 13  
8 Notice”). The October 13 Notice alleged that Bond and Grocery Outlet caused consumer  
9 product exposures in violation of Proposition 65 by producing or making available hand tools  
10 containing DEHP, including Bond Bypass Pruner, #68WP, Drop Forged Steel, Nylon Pouch  
11 Included, UPC # 0 34613 07932 0.

12 2.4 On or about February 2, 2016, CAG served a 60-Day Notice of Violation under  
13 Proposition 65 to Bond, Ross, and Dd’s Discounts, and to the California Attorney General,  
14 County District Attorneys, and City Attorneys for each California city containing a population of  
15 at least 750,000 people in whose jurisdictions the alleged violations allegedly occurred  
16 (“February 2 Notice”). The February 2 Notice alleged that Bond, Ross, and Dd’s Discounts  
17 caused consumer product and occupational exposures in violation of Proposition 65 by  
18 producing or making available hand tools containing DEHP, including Bond Ultimate Pruning  
19 Set, 24 in. Bypass Looper and 8 in. Bypass Pruner, UPC # 0 35355 05945 8.

20 2.5 The Notices referred to in Sections 2.1 through 2.4 are attached hereto as Exhibit  
21 A, and are collectively referred to as the “Notices.” The pruner products identified in Sections  
22 2.1 through 2.4 are collectively referred to as “Pruners.”

23 2.6 DEHP and DINP (the “Listed Chemicals”) are listed under Proposition 65 as  
24 chemicals known to the State of California to cause cancer, birth defects, and/or other  
25 reproductive harm.

26 2.7 The products that are covered by this Agreement are all garden tool products  
27 manufactured, distributed, supplied, sold, or offered for sale in California by Bond, including  
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1 those sold under private labels, and which contain either of the Listed Chemicals (the “Covered  
2 Products”).

3 2.8 Bond denies the material, factual, and legal allegations contained in the Notices  
4 as applicable to Bond, and maintains that all Covered Products that Bond has manufactured,  
5 distributed, supplied, sold, and/or offered for sale in California have been and are in compliance  
6 with all laws, including Proposition 65.

7 2.9 The Parties have expended effort and resources in investigating and evaluating  
8 the allegations set forth in the Notices, including exchanging information regarding the Covered  
9 Products and engaging in a negotiation and technical dialogue regarding settlement.

10 2.10 To avoid prolonged and costly litigation, the Parties therefore enter into this  
11 Agreement to resolve and settle all Proposition 65 claims concerning the Covered Products,  
12 including without limitation any disputes, obligations, claims and/or causes of action that were  
13 or could have been asserted by CAG with respect to such matters.

14 2.11 This Agreement is the direct result of a compromise of disputed allegations and  
15 claims. As such, it is the Parties’ intent that nothing in this Agreement shall be construed as an  
16 admission by any Party of any fact, conclusion of law, issue of law, or violation of law, nor shall  
17 compliance with this Agreement constitute or be construed as an admission by any Party of any  
18 fact, conclusion of law, issue of law, or violation of law.

19 2.12 Except as otherwise expressly provided herein, nothing in this Agreement shall  
20 prejudice, waive or impair any right, remedy, argument or defense any Party may have in any  
21 other legal proceeding.

22 **3. EFFECTIVE DATE**

23 3.1 The Effective Date of this Agreement shall be the date on which this Agreement  
24 is fully executed by the Parties.

25 **4. INJUNCTIVE RELIEF**

26  
27 4.1 Reformulation Commitment. Bond promises, and represents that any Covered  
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1 Product manufactured more than ninety (90) days after the Effective Date and offered for sale in  
2 California shall be reformulated to a point where the level of any Listed Chemical in the  
3 Covered Products does not exceed 0.1% by weight, or shall otherwise after such 90-day period  
4 cease importing or manufacturing any unreformulated Covered Products for sale in California.

5 4.2 Warnings on Existing Inventory.

6 Bond agrees, promises, and represents that, with respect to any unreformulated Covered  
7 Product manufactured on or after the Effective Date through ninety (90) days after the Effective  
8 Date and intended for sale in California, and with respect to any unreformulated Pruners that are  
9 present in inventory existing as of the Effective Date and intended for sale in California, it will  
10 provide warnings on such Covered Products and Pruners, respectively, that comply with  
11 Proposition 65. The warnings shall be provided in such a conspicuous and prominent manner that  
12 will assure the message is made available and likely to be read, seen, or heard by the consumer  
13 prior to or at the time of the sale or purchase. The Parties agree that product labeling stating that  
14 “WARNING: This product contains chemicals known to the State of California to cause cancer  
15 and birth defects, or other reproductive harm” shall constitute compliance with Proposition 65  
16 with respect to the Listed Chemical in the Covered Products for any Covered Products in existing  
17 inventory that had not been reformulated and were distributed and/or sold by Releasees or  
18 Downstream Releasees after the Effective Date.

19 **5. PAYMENTS**

20 5.1 In full and complete satisfaction of all civil penalties and reasonable attorney’s  
21 fees and costs incurred by CAG that have or could have been claimed in connection with this  
22 action up to and including the Effective Date, Bond shall pay the total sum of eighty-five  
23 thousand dollars (\$85,000), by separate checks as allocated as set forth below. Payment shall be  
24 made within fifteen (15) calendar days after the Effective Date.

25 5.2 Penalty: Bond shall issue two checks in the amount of five-thousand dollars  
26 (\$5,000) as penalty under Health & Safety Code § 25249.12 as follows: \$3,750 (75% of the  
27 penalty total) shall be made payable to the California Office of Environmental Health Hazard  
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1 Assessment (“OEHHA”), and \$1,250 (25% of the penalty total) shall be make payable CAG.  
2 Such payment to OEHHA shall be forwarded to OEHHA by CAG within thirty (30) calendar  
3 days after receipt by CAG of payment by Bond. CAG shall provide to the Bond proof of  
4 payment to OEHHA within five (5) calendar days of CAG’s payment to OEHHA. Two separate  
5 1099s shall be issued for the above payments to: (1) OEHHA, Attn: Accounting, at P.O. Box  
6 4010, Sacramento, CA 95812 (EIN: 68-0284486), and (2) CAG, delivered to Yeroushalmi &  
7 Associates at the address set forth below in Section 5.5.

8 5.3 Payment to CAG: Fifteen thousand dollars (\$15,000) shall be paid to CAG.

9 5.4 Attorneys’ Fees and Costs: Sixty-five thousand dollars (\$65,000) shall be paid to  
10 Yeroushalmi & Associates, as CAG’s attorneys, for reasonable investigation fees and costs,  
11 attorneys’ fees, and any other costs incurred as a result of investigating and bringing this matter  
12 to Bond’s attention.

13 5.5 All payments required under this Section 5 shall be delivered to: Reuben  
14 Yeroushalmi, Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly  
15 Hills, California 90212. CAG shall provide W-9s to Bond for each payee within five (5) days  
16 after the Effective Date.

17 5.6 Except as otherwise provided in Section 5.4 above and Section 10.3 below, the  
18 Parties agree to bear their own costs and attorney’s fees in connection with the preparation and  
19 execution of this Agreement.

## 20 **6. CAG’S RELEASE OF ALL CLAIMS**

21 6.1 This Agreement is a full, final, and binding resolution between (a) CAG on  
22 behalf of CAG, and (b) Bond, and (i) each of Bond’s respective shareholders, members, parents,  
23 divisions, subdivisions, subsidiaries, partners, and affiliated entities, and each of their respective  
24 directors, officers, employees, attorneys, and any and all successors and assigns (collectively,  
25 “Releasees”), and (ii) all entities to which Releasees directly or indirectly distribute or sell the  
26 Covered Products, or have directly or indirectly distributed or sold the Covered Products,  
27 including but not limited to distributors, wholesalers, customers, retailers, franchisees,  
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1 cooperative members, licensors, licensees, owners, purchasers, users, including without  
2 limitation Ross, Grocery Outlet, Black & Decker, and Dd's Discounts, and each of their  
3 respective parent companies, subsidiaries, and corporate affiliates (collectively, "Downstream  
4 Releasees"), regarding any violations or alleged violations of Proposition 65 that have or could  
5 have been asserted against Releasees and/or Downstream Releasees, with respect to the failure  
6 to warn about exposures to the Listed Chemicals from any Covered Product manufactured,  
7 distributed, supplied, sold or offered for sale by Releasees or Downstream Releasees.

8           6.2     CAG, acting on its own behalf, releases Releasees and Downstream Releasees  
9 from all claims for violations or alleged violations of Proposition 65 prior to the Effective Date  
10 based on exposures to the Listed Chemicals from any Covered Product manufactured,  
11 distributed, supplied, sold or offered for sale by Releasees or Downstream Releasees.

12           6.3     In further consideration of the promises and agreements herein contained, CAG,  
13 on its own behalf, and on behalf of its past and current agents, representatives, attorneys,  
14 successors, predecessors, and/or assigns, hereby waives and releases any right to institute or  
15 participate in, directly or indirectly, any form of legal action and releases all claims that it may  
16 have, including without limitation, all actions and causes of action in law and/or in equity, all  
17 suits, costs, fines, penalties, losses, or expenses, including but not exclusively, investigation fees,  
18 expert fees, and attorneys' fees, liabilities, obligations, and demands of any nature, whether  
19 known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to the  
20 Listed Chemicals contained in the Covered Products manufactured, distributed, supplied, sold,  
21 and/or offered for sale by Bond before the Effective Date. CAG has full knowledge of section  
22 1542 of the California Civil Code, and acknowledges that the claims released in this section 6.3  
23 may include unknown claims and waives Civil Code section 1542 as to any such unknown  
24 claims. Section 1542 reads as follows:

25           A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR  
26 DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME  
27 OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST  
28 HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE  
DEBTOR.

1 CAG acknowledges and understands the significance and consequences of this specific waiver of  
2 California Civil Code section 1542. The release in this section shall have no force or effect until  
3 the full amount of payments set forth in Section 5 required of Bond are paid in full.  
4

5 6.4 The Parties agree that material compliance with the terms of this Agreement  
6 constitutes compliance with Proposition 65 by any Releasee or Downstream Releasee with  
7 respect to any alleged failure to warn about the Listed Chemicals in the Covered Products  
8 manufactured, distributed, supplied, sold, and/or offered for sale by Bond after the Effective  
9 Date.

10 6.5 Liability for Covered Products that were manufactured, distributed, supplied,  
11 sold, and/or offered for sale in California by Bond prior to the Effective Date shall be subject to  
12 the release of liability set forth in this Section 6, without regard to when such Covered Products  
13 were, or are in the future, sold to customers or users.

14 **7. BOND RELEASE OF CAG**

15 7.1 Bond respectively waives any and all claims against CAG, and its attorneys,  
16 consultants, and representatives, for any and all actions or statements made or undertaken by  
17 CAG in the course of this action or otherwise seeking enforcement of Proposition 65 against  
18 them in this matter, and/or with respect to the Covered Products.

19 **8. PUBLIC BENEFIT**

20 8.1 It is Bond's understanding that the commitments agreed to herein, and actions to  
21 be taken by Bond under this Agreement, confer a significant benefit to the general public, as set  
22 forth in Code of Civil Procedure section 1021.5 and Cal. Admin. Code tit. 11, section 3201. As  
23 such, it is Bond's intent that to the extent any other private party initiates an action alleging a  
24 violation of Proposition 65 with respect to Bond's failure to provide a warning concerning  
25 exposure to the Listed Chemicals with respect to the Covered Products it has distributed, sold, or  
26 offered for sale in California, or will distribute, sell, or offer for sale in California, such  
27 distribution or sale within the scope of this Agreement, such private party action would not  
28 confer a significant benefit on the general public as to those Covered Products addressed in this

1 Settlement Agreement, provided that Bond is in material compliance with this Settlement  
2 Agreement.

3 **9. NOTICES**

4 9.1 All notices, requests, demands and other correspondence (collectively, “Section 9  
5 Notice”) that a Party is required or desires to serve upon or deliver to the other Party shall be in  
6 writing and sent by first class mail (certified and return receipt requested), overnight courier  
7 services, or electronic mail as follows:

8 For Consumer Advocacy Group:

9 Reuben Yeroushalmi  
10 Yeroushalmi & Yeroushalmi  
11 9100 Wilshire Boulevard  
12 Suite 240W  
13 Beverly Hills, California 90212  
14 reuben@yeroushalmi.com

15 For Bond:

16 Joshua A. Bloom  
17 Meyers, Nave, Riback, Silver & Wilson  
18 555 12th Street, Suite 1500  
19 Oakland, CA 94607  
20 [jbloom@meyersnave.com](mailto:jbloom@meyersnave.com)

21 9.2 Any Section 9 Notice sent by first class mail shall be deemed received five (5)  
22 calendar days after the date of mailing. Any Notice sent by electronic mail shall be deemed  
23 received upon electronic transmission thereof, provided sender does not receive an electronic  
24 notice of non-delivery. Any Section 9 Notice sent by overnight courier service shall be deemed  
25 received on the day of actual delivery as shown by the confirmation of delivery by the  
26 messenger or courier service. If the date of receipt of any Section 9 Notice to be given  
27 hereunder falls on a weekend or legal holiday, then such date of receipt shall be automatically  
28 extended to the next business day.

9.3 The foregoing addresses may be changed by Section 9 Notice given in  
accordance with this Section 9 without requiring modification of the Agreement pursuant to  
Section 15.



1 **10. DISPUTE RESOLUTION/ENFORCEMENT**

2 10.1 Notice of Settlement Agreement Violation. If CAG alleges a violation of this  
3 Agreement by Bond, it shall serve notice of such alleged violation (“NOV”) on Bond. At a  
4 minimum, the NOV shall specify the Covered Product alleged to contain Listed Chemical levels  
5 above the reformulation level set forth in section 4.1., and include a copy of the test results  
6 obtained that form the basis of CAG’s allegations, the test methodology used, and specify in  
7 detail any modification to accepted testing methodologies. CAG shall also provide to Bond a  
8 split sample of the Covered Product from the same exemplar product from which the CAG  
9 sample was drawn.

10 10.2 Dispute Resolution Procedure. In the event that CAG serves an NOV on Bond,  
11 or in the event of any other dispute between the Parties arising out of this Consent Judgment, the  
12 Parties shall meet and confer in an attempt to resolve the dispute informally. Should such  
13 attempts at informal resolution fail, the disputing party may, by motion or application for an  
14 order to show cause before a court of competent jurisdiction, file a motion or application to  
15 enforce the terms of this Agreement, provided, however, that no action by CAG to enforce this  
16 Agreement may be commenced until at least ninety (90) days after CAG serves Bond with an  
17 NOV.

18 10.3 Prevailing Party Fees and Costs. In the event that any Party files a motion or  
19 application to enforce the terms of this Agreement, the prevailing party in such action shall be  
20 entitled to recover from the other Party its reasonable attorney’s fees and costs incurred as a  
21 result of such motion or application. This Agreement may only be enforced by the Parties.

22 **11. SUCCESSORS AND ASSIGNS**

23 11.1 This Agreement shall be binding upon and inure to the benefit of the Parties  
24 hereto and their respective divisions, subdivisions, and subsidiaries, and the successors or  
25 assigns of any of them.

26 **12. GOVERNING LAW**

27 12.1 The terms of this Agreement shall be governed by the laws of the State of  
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1 California.

2 12.2 In the event that Proposition 65 is repealed or otherwise rendered inapplicable or  
3 limited by reason of law generally, or as to Bond specifically as a result of a statutory  
4 exemption, or as to any of the Covered Products, then Bond may provide written notice to CAG  
5 of any asserted change in the law, or its applicability to Bond or the Covered Products, and Bond  
6 shall have no further obligations pursuant to this Agreement to the extent that Bond or the  
7 Covered Products are so affected. Furthermore, to the extent that the maximum available dose  
8 level(s) and/or no significant risk level(s) for any Listed Chemical is/are decreased from levels  
9 applicable as of the Effective Date, such decrease shall have no effect on, or otherwise act to  
10 revise, the standard set forth in Section 4.1 herein for the establishment of Reformulated  
11 Products.

12 **13. DRAFTING AND INTERPRETATION**

13 13.1 This Agreement is a result of the joint efforts of the Parties. The Parties,  
14 including their counsel, have each been given a full opportunity to participate in the preparation  
15 of this Agreement. Each of the Parties agrees and represents that no promise, inducement or  
16 agreement not expressed in this Agreement has been made to effectuate this Agreement. The  
17 Parties' counsel have reviewed and approved this Agreement. Accordingly, the rule of  
18 construction that any ambiguities are to be resolved against the drafting party shall not be  
19 employed in the interpretation of this Agreement.

20  
21 **14. SEVERABILITY**

22 14.1 In the event that any of the provisions of this Agreement are held by a court to be  
23 unenforceable, the validity of the enforceable provisions remaining shall not be adversely  
24 affected, but only to the extent the deletion of the provision deemed unenforceable does not  
25 materially affect or otherwise result in the effect of the Agreement being contrary to the Parties'  
26 intent of entering into this Agreement.

27 **15. MODIFICATION**

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1           15.1 This Agreement or any of its provisions may be modified only by express written  
2 agreement of the Parties, or by an order of a court of competent jurisdiction upon motion and in  
3 accordance with law.

4           15.2 A Party seeking to modify this Agreement through a court order shall attempt in  
5 good faith to meet and confer with the other Party prior to filing a motion to modify the  
6 Agreement.

7 **16. ENTIRE AGREEMENT**

8           16.1 This Agreement contains the entire integrated agreement and understanding of  
9 the Parties and supersedes any and all prior written or oral agreements, negotiations,  
10 commitments or understandings concerning the subject matter of this Agreement.

11 **17. COUNTERPARTS**

12           17.1 This Agreement may be executed in counterparts, each of which shall be deemed  
13 an original, and all of which, when taken together, shall constitute one and the same document.

14 **18. AUTHORIZATION**

15           18.1 The undersigned hereby represent and warrant that they are authorized to execute  
16 this Agreement on behalf of the entity or individual for which they are signing and may bind that  
17 entity or individual to the promises and obligations of this Agreement.

18 **19. COMPLIANCE WITH HEALTH AND SAFETY CODE § 25249.7(f)**


19           19.1 CAG agrees to comply with the reporting form requirements referenced in  
20 California Health and Safety Code Section 25249.7(f).

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DATED: March 31, 2016

Consumer Advocacy Group

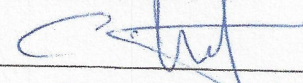
By: 

Print Name: Melissa Sasso

Title: Executive director

DATED: March 31, 2016

Bond Manufacturing Company

By: 

Print Name: Cameron Jenkins

Title: President

**EXHIBIT A**

[60-DAY NOTICES ATTACHED]

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SIXTY-DAY NOTICE OF INTENT TO SUE FOR VIOLATION OF THE SAFE DRINKING WATER  
AND TOXIC ENFORCEMENT ACT OF 1986  
(*Cal. Health & Safety Code* § 25249.5, *et seq.*) (“Proposition 65”)

March 2, 2015

Current President/CEO  
Bond Manufacturing Co.  
1700 West 4<sup>th</sup> Street  
Antioch, CA 94509

Michael Balmuth, CEO, or  
Current President/CEO  
Ross Dress For Less, Inc..  
4440 Rosewood Drive  
Pleasanton, CA 94588-3051

Michael Balmuth, CEO, or  
Current President/CEO  
Ross Stores, Inc.  
4440 Rosewood Drive  
Pleasanton, CA 94588-3051

Michael Balmuth, CEO, or  
Current President/CEO  
Ross Dress For Less  
5530 Cherry Avenue  
Long Beach, CA 90805

AND THE PUBLIC PROSECUTORS LISTED ON THE DISTRIBUTION LIST ACCOMPANYING THE  
ATTACHED CERTIFICATE OF SERVICE

Re: Violations of Proposition 65 concerning **Hand Tools Containing Di (2-ethylhexyl)  
phthalate (“DEHP”)**

To whom else this may concern:

**Consumer Advocacy Group, Inc.** (“CAG”), the noticing entity, located at **9903 Santa Monica Boulevard #225, Beverly Hills, California 90212**, serves this Notice of Violation (“Notice”) on Bond Manufacturing Co., Ross Dress for Less, Inc., Ross Stores, Inc., and Ross Dress for Less, (collectively “Violators”) pursuant to and in compliance with Proposition 65. Violators may contact CAG concerning this Notice through its designated person within the entity, its attorney, Reuben Yeroushalmi 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, CA 90212, telephone no. (310) 623-1926, facsimile no. (310) 623-1930. This Notice satisfies a prerequisite for CAG to commence an action against Violators in any Superior Court of California to enforce Proposition 65. The violations addressed by this Notice occurred at numerous locations in each county in California as reflected in the district attorney addresses listed in the attached distribution list. CAG is serving this Notice upon each person or entity responsible for the alleged violations, the California Attorney General, the district attorney for each county where alleged violations occurred, and the City Attorney for each city with a population (according to the most recent decennial census) of over 750,000 located within counties where the alleged violations occurred.

- CAG is an organization based in California. CAG is an entity dedicated to protecting the environment, improving human health, and supporting environmentally sound practices. By sending this Notice, CAG is acting “in the public interest” pursuant to Proposition 65.
- This Notice concerns violations of the warning prong of Proposition 65, which states 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 giving clear and reasonable warning to such individual . . .” *Cal. Health & Safety Code* § 25249.6.

- **Hand Tools** contain **Di (2-ethylhexyl) phthalate (“DEHP”)**, also known as Diethyl Hexyl Phthalate and Bis (2-ethylhexyl) phthalate. CAG has discovered **Hand Tools** specifically **Pruner Sets with Polymer Grips (“Pruner Sets”)** containing **DEHP**. **DEHP** is known to the State of California to cause both cancer and reproductive toxicity, developmental, male. On January 1, 1988, the Governor of California added DEHP to the list of chemicals known to the State to cause cancer, and on October 24, 2003, the Governor added DEHP to the list of chemicals known to the State to cause developmental male reproductive toxicity. Both additions took place more than twenty (20) months before CAG served this Notice.
  - An exemplar of the violations caused by **Pruner Sets** includes but is not limited to:
    - **Bond® Drop Forged Pruner Set, ¾ in., #3108, UPC # 0 35355 03108 9**
- This Notice addresses consumer products exposures. A “[c]onsumer products exposure’ is an exposure which results from a person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service.” *Cal. Code Regs.* 27 tit. § 25602(b).

Violators caused consumer product exposures in violation of Proposition 65 by producing or making available **Pruner Sets** for distribution or sale in California to consumers. The packaging for **Pruner Sets** (meaning any label or other written, printed or graphic matter affixed to or accompanying the product or its container or wrapper) contains no warning or Proposition 65-compliant warning. Nor did Violator, with regard to **Pruner Sets**, provide a system of signs, public advertising identifying the system and toll-free information services, or any other system, which provided warning or clear and reasonable warnings. Nor did Violator, with regard to **Pruner Sets**, provide identification of the product at retail outlets in a manner that provided a warning through shelf labeling, signs, menus, or a combination thereof.

- This Notice also concerns occupational exposures. An “[o]ccupational exposure’ means an exposure to any employee in his or her employer’s workplace.” *Cal. Code Regs.* tit. 27, § 25602(f).

Violators’ caused occupational exposures, to their respective products, in violation of Proposition 65 by allowing employees to handle the **Pruner Sets** in the course of packaging, shipping, distributing, promoting, and selling the **Pruner Sets** without having first given clear and reasonable warnings to such employees that, by handling the **Pruner Sets**, such employees would suffer exposures to DEHP. Violators’ employees were exposed to DEHP by touching the **Pruner Sets** with their bare skin at Violators’ premises located at 5530 Cherry Avenue, Long Beach, CA 90805, among other locations where these activities take place including but not limited to other distributing, shipping, warehousing, packaging and retail centers. Violators did not provide any Proposition 65-compliant warnings on any of the products or any substance present or any sign or system of signs within the workplace.

***This notice alleges the violation of Proposition 65*** with respect to occupational exposures governed by the California State Plan for Occupational Safety and Health. The State Plan incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997.

This approval specifically placed certain conditions with regard to occupational exposures on Proposition 65, including that it does not apply to (a) the conduct of manufacturers occurring outside the State of California; and (b) employers with less than ten (10) employees. The approval also provides that an employer may use any means of compliance in the general hazard communication requirements to comply with Proposition 65. It also requires that supplemental enforcement be subject to the supervision of the

California Occupational Safety and Health Administration. Accordingly, any settlement, civil complaint, or substantive court orders in this matter must be submitted to the California Attorney General.

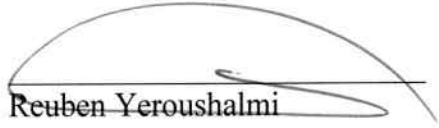
These violations occurred each day between March 2, 2012 and March 2, 2015, and are ever continuing thereafter.

The principal routes of exposure were through dermal contact, ingestion, and inhalation. Persons sustain exposures by handling the **Pruner Sets** without wearing gloves or by touching bare skin or mucous membranes with gloves after handling **Pruner Sets**, as well as direct and indirect hand to mouth contact, hand to food to mouth, direct contact to food then to mouth, hand to mucous membrane, or breathing in particulate matter emanating from the **Pruner Sets** during installation and use, as well as through environmental mediums that carry the **DEHP** once contained within the **Pruner Sets**.

Proposition 65 requires that notice of intent to sue be given to the violator(s) sixty (60) days before the suit is filed. *Cal. Health & Safety Code* § 25249.7(d)(1). With this letter, CAG gives notice of the alleged violations to Violator and the appropriate governmental authorities. In absence of any action by the appropriate governmental authorities within sixty (60) calendar days of the sending of this notice (plus ten (10) calendar days because the place of address is beyond the State of California but within the United States), CAG may file suit. *See Cal. Code Civ. Proc.* § 1013; *Cal. Health & Safety Code* § 25249.7(d)(1); and *Cal. Code Regs.* tit. 27 § 25903(d)(1). CAG remains open and willing to discussing the possibility of resolving its grievances short of formal litigation.

With the copy of this notice submitted to the Violators, a copy of the following is attached: The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary.

Dated: 3/2/15

  
Reuben Yeroushalmi  
Yeroushalmi & Yeroushalmi  
Attorneys for Consumer Advocacy Group, Inc.



## 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. Please refer to the statute and OEHHA's 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.

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 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 say 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:

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<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>.

**Grace Periods.** 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 full and part-time 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 a 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.

#### *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.

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2 See Section 25501(a)(4)

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 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 or any reimbursement for costs and attorney's fees, if the notice of violation was served on or after October 5, 2013, and 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 as noted below) to the private party within 30 days; and
- Notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private-party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

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 greater than 750,000 in population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private-party.

A copy of the notice of special compliance procedure and proof of compliance form is included with this notice and can be downloaded from OEHA's website at: <http://oehha.ca.gov/prop65/law/p65law72003.html>. The notice is reproduced here:

Date:  
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:  
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 2014

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.

**Hand Tools containing DEHP**

**CERTIFICATE OF MERIT**

Health and Safety Code Section 25249.7(d)

I, Reuben Yeroushalmi, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the party(s) identified in the notice(s) has violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party.
3. I have consulted with at least one person with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the action.
4. Based on the information obtained through those 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 the 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 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 Health and 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: 3/2/15

By:  \_\_\_\_\_  
Reuben Yeroushalmi

**CERTIFICATE OF SERVICE**

I am over the age of 18 and not a party to this case. I am a resident of or employed in the county where the mailing occurred. My business address is 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, CA 90212.

ON THE DATE SHOWN BELOW, I SERVED THE FOLLOWING:

- 1) 60-Day Notice of Intent to Sue Under Health & Safety Code Section 25249.6
- 2) Certificate of Merit: Health and Safety Code Section 25249.7(d)
- 3) Certificate of Merit (Attorney General Copy): Factual information sufficient to establish the basis of the certificate of merit (*only sent to Attorney General*)
- 4) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary

by enclosing copies of the same in a sealed envelope, along with an unsigned copy of this declaration, addressed to each person shown below and depositing the envelope in the U.S. mail with the postage fully prepaid. Place of Mailing: Beverly Hills, CA

**Name and address of each party to whom documents were mailed:**

Current President/CEO  
Bond Manufacturing Co.  
1700 West 4<sup>th</sup> Street  
Antioch, CA 94509

Michael Balmuth, CEO, or  
Current President/CEO  
Ross Dress For Less, Inc..  
4440 Rosewood Drive  
Pleasanton, CA 94588-3051

Michael Balmuth, CEO, or  
Current President/CEO  
Ross Stores, Inc.  
4440 Rosewood Drive  
Pleasanton, CA 94588-3051

Michael Balmuth, CEO, or  
Current President/CEO  
Ross Dress For Less  
5530 Cherry Avenue  
Long Beach, CA 90805

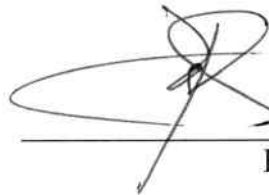
**Name and address of each public prosecutor to whom documents were mailed:**

See Distribution List

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

Date of Mailing: 3/2/15

By: \_\_\_\_\_



Hya Gingoyon



## Distribution List

Alameda County District Attorney 1225 Fallon St, Room 900 Oakland, CA 94612	Los Angeles County District Attorney 210 W Temple St, 18th Floor Los Angeles, CA 90012	Mono County District Attorney PO Box 617 Bridgeport, CA 93517
Alpine County District Attorney PO Box 248 Markleeville, CA 96120	Madera County District Attorney 209 W Yosemite Ave Madera, CA 93637	San Joaquin County District Attorney PO Box 990 Stockton, CA 95201 -0990
Amador County District Attorney 708 Court, Suite 202 Jackson, CA 95642	Mariposa County District Attorney P.O. Box 730 Mariposa, CA 95338	San Francisco County District Attorney 850 Bryant St, Rm 322 San Francisco, CA 94103
Butte County District Attorney 25 County Center Dr. Oroville, CA 95965-3385	Marin County District Attorney 3501 Civic Center Drive, #130 San Rafael, CA 94903	San Diego County District Attorney 330 W. Broadway, Ste 1300 San Diego, CA 92101-3803
Calaveras County District Attorney 891 Mountain Ranch Road San Andreas, CA 95249	Mendocino County District Attorney P.O. Box 1000 Ukiah, CA 95482	San Bernardino County District Attorney 316 N Mountain View Ave San Bernardino, CA 92415-0004
Office of the Attorney General P.O. Box 70550 Oakland, CA 94612-0550	Los Angeles City Attorney 200 N Main St Ste 1800 Los Angeles CA 90012	San Francisco City Attorney # 1 Dr. Carlton B. Goodlett Place, Suite 234 San Francisco, CA 94102
Colusa County District Attorney Courthouse, 547 Market St. Colusa, CA 95932	Inyo County District Attorney P.O. Drawer D Independence, CA 93526	Placer County District Attorney 10810 Justice Center Drive Suite 240 Roseville, CA 95678-6231
Contra Costa County District Attorney 725 Court St., Room 402 Martinez, CA 94553	Orange County District Attorney PO Box 808 Santa Ana, CA 92702	Merced County District Attorney 650 W. 20 <sup>th</sup> Street Merced, CA 95340
Del Norte County District Attorney 450 "H" St. Crescent City, CA 95531	Nevada County District Attorney 201 Church St, Suite 8 Nevada City, CA 95959-2504	Napa County District Attorney PO Box 720 Napa, CA 94559-0720
El Dorado County District Attorney 515 Main St. Placerville, CA 95667-5697	Plumas County District Attorney 520 Main Street, Rm 404 Quincy, CA 95971	Riverside County District Attorney 3960 Orange St. Ste. 5 Riverside, CA 92501
Fresno County District Attorney 2220 Tulare St, Ste. 1000 Fresno, CA 93721	Sacramento County District Attorney 901 G Street Sacramento, CA 95814	San Benito County District Attorney 419 4th St Hollister, CA 95023
Glenn County District Attorney PO Box 430 Willows, CA 95988	San Luis Obispo County District Attorney County Government Center, Rm 450 San Luis Obispo, CA 93408	Siskiyou County District Attorney PO Box 986 Yreka, CA 96097
Humboldt County District Attorney 825 5th St., 4 <sup>th</sup> Floor Eureka, CA 95501	San Mateo County District Attorney 400 County Center Redwood City, CA 94063	Solano County District Attorney 600 Union Ave Fairfield, CA 94533
Imperial County District Attorney 939 W. Main St., 2 <sup>nd</sup> Floor El Centro, CA 92243-2860	Santa Barbara County District Attorney 1112 Santa Barbara St. Santa Barbara, CA 93101	Sonoma County District Attorney 600 Administration Dr., Rm 212-J Santa Rosa, CA 95403
Kern County District Attorney 1215 Truxtun Ave. Bakersfield, CA 93301	Santa Clara County District Attorney 70 W Hedding St. San Jose, CA 95110	Shasta County District Attorney 1525 Court St, 3rd Floor Redding, CA 96001-1632
Kings County District Attorney Gov't Ctr, 1400 W Lacey Blvd Hanford, CA 93230	Santa Cruz County District Attorney PO Box 1159 Santa Cruz, CA 95061	Sierra County District Attorney PO Box 457 Downieville, CA 95936-0457
Lake County District Attorney 255 N Forbes St Lakeport, CA 95453-4790	Stanislaus County District Attorney PO Box 442 Modesto, CA 95353	Trinity County District Attorney PO Box 310 Weaverville, CA 96093
Modoc County District Attorney 204 S. Court Street Alturas, CA 96101-4020	Sutter County District Attorney 446 Second Street Yuba City, CA 95991	Yuba County District Attorney 215 5th St Marysville, CA 95901
San Diego City Attorney City Center Plaza 1200 3rd Ave # 1100 San Diego, CA 92101	Lassen County District Attorney 200 S Lassen St, Suite 8 Susanville, CA 96130	Monterey County District Attorney PO Box 1131 Salinas, CA 93902
Tuolumne County District Attorney 2 S Green St Sonora, CA 95370	Tulare County District Attorney County Civic Center, Rm 224 Visalia, CA 93291	Yolo County District Attorney 310 Second St Woodland, CA 95695
Ventura County District Attorney 800 S Victoria Ave Ventura, CA 93009	Tehama County District Attorney P.O. Box 519 Red Bluff, CA 96080	San Jose City Attorney 151 W. Mission St. San Jose, CA 95110

SIXTY-DAY NOTICE OF INTENT TO SUE FOR VIOLATION OF THE SAFE DRINKING WATER  
AND TOXIC ENFORCEMENT ACT OF 1986  
(*Cal. Health & Safety Code § 25249.5, et seq.*) (“Proposition 65”)

August 21, 2015

Nolan Archibald, CEO/ President  
Or Current President/ CEO  
The Black & Decker Corporation  
701 E. Joppa Road  
Mail Stop No. TW230  
Towson, MD 21286

Nolan Archibald, CEO/ President  
Or Current President/ CEO  
Black & Decker Corporation  
701 E. Joppa Road  
Mail Stop No. TW230  
Towson, MD 21286

John F. Lundgren, CEO  
Or Current President/ CEO  
Stanley Black & Decker, Inc.  
1000 Stanley Dr.  
New Britain, CT 06053

Nolan Archibald, CEO/ President  
Or Current President/ CEO  
Black & Decker (U.S.) Inc.  
701 E. Joppa Road  
Mail Stop No. TW230  
Towson, MD 21286

Barbara Rentler, CEO, or  
Current President/ CEO  
Ross Stores, Inc.  
5130 Hacienda Dr  
Dublin, CA 94568-7579

Barbara Rentler, CEO, or  
Current President/ CEO  
Ross Dress for Less, Inc.  
Riverside, Store: 0020  
10255 Magnolia Ave.  
Riverside, CA 92504

AND THE PUBLIC PROSECUTORS LISTED ON THE DISTRIBUTION LIST ACCOMPANYING THE  
ATTACHED CERTIFICATE OF SERVICE

Re: Violations of Proposition 65 concerning **Hand Tools containing Di Isononyl Phthalate**  
**(“DINP”)**

To whom else this may concern:

**Consumer Advocacy Group, Inc.** (“CAG”), the noticing entity, located at **9903 Santa Monica Boulevard #225, Beverly Hills, California 90212**, serves this Notice of Violation (“Notice”) The Black & Decker Corporation, Black & Decker Corporation, Stanley Black & Decker, Inc., Black & Decker (U.S) Inc., Ross Stores, Inc., and Ross Dress for Less Riverside, Store: 0020 (collectively “Violators”) pursuant to and in compliance with Proposition 65. Violators may contact CAG concerning this Notice through its designated person within the entity, its attorney, Reuben Yeroushalmi 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, CA 90212, telephone no. (310) 623-1926, facsimile no. (310) 623-1930. This Notice satisfies a prerequisite for CAG to commence an action against Violators in any Superior Court of California to enforce Proposition 65. The violations addressed by this Notice occurred at numerous locations in each county in California as reflected in the district attorney addresses listed in the attached distribution list. CAG is serving this Notice upon each person or entity responsible for the alleged violations, the California Attorney General, the district attorney for each county where alleged violations occurred, and the City Attorney for each city with a population (according to the most recent decennial census) of over 750,000 located within counties where the alleged violations occurred.

- CAG is an organization based in California. CAG is an entity dedicated to protecting the environment, improving human health, and supporting environmentally sound practices. By sending this Notice, CAG is acting “in the public interest” pursuant to Proposition 65.

- This Notice concerns violations of the warning prong of Proposition 65, which states 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 giving clear and reasonable warning to such individual . . .” *Cal. Health & Safety Code* § 25249.6.
- CAG has discovered **Hand Tools** specifically **Pruners** with Polymer Coated Grips (“**Pruners**”) containing **Di Isononyl Phthalate (“DINP”)**. **DINP** is known to the State of California to cause cancer. On December 20, 2013, the Governor of California added **DINP** to the list of chemicals known to the State to cause cancer. This addition took place more than twelve (12) months before CAG served this Notice.
  - An exemplar of the violations caused by **Pruners** includes but is not limited to:
    - **Black&Decker®, 8” Pruner with Black Polymer coated grip. Tag with “ROSS Reduced Original \$7.99 \$5.49 ‘400117216781’ ‘DV0 D2086 C 6656”**
- This Notice addresses consumer products exposures. A “[c]onsumer products exposure” is an exposure which results from a person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service.” *Cal. Code Regs.* 27 tit. § 25602(b).

Violators caused consumer product exposures in violation of Proposition 65 by producing or making available **Pruners** for distribution or sale in California to consumers. The packaging for **Pruners** (meaning any label or other written, printed or graphic matter affixed to or accompanying the product or its container or wrapper) contains no Proposition 65-compliant warning. Nor did Violator, with regard to **Pruners**, provide a system of signs, public advertising identifying the system and toll-free information services, or any other system, which provided clear and reasonable warnings. Nor did Violator, with regard to **Pruners**, provide identification of the product at retail outlets in a manner that provided a warning through shelf labeling, signs, menus, or a combination thereof.

This Notice also concerns occupational exposures. An “[o]ccupational exposure” means an exposure to any employee in his or her employer’s workplace.” *Cal. Code Regs.* tit. 27, § 25602(f).

Violators caused occupational exposures, to their respective products, in violation of Proposition 65 by allowing employees to handle the **Pruners** in the course of packaging, shipping, distributing, promoting, and selling the **Pruners** without having first given clear and reasonable warnings to such employees that, by handling the **Pruners**, such employees would suffer exposures to [CHEMICAL]. Violators’ employees were exposed to [CHEMICAL] by touching the **Pruners** with their bare skin at Violators’ premises located at Ross Dress for Less, Inc. Riverside, Store: 0020; 10255 Magnolia Ave., Riverside, CA 92504 among other locations where these activities take place including but not limited to other distributing, shipping, warehousing, packaging and retail centers. Violators did not provide any Proposition 65-compliant warnings on any of the products or any substance present or any sign or system of signs within the workplace.

This notice alleges the violation of Proposition 65 with respect to occupational exposures governed by the California State Plan for Occupational Safety and Health. The State Plan incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997.

This approval specifically placed certain conditions with regard to occupational exposures on Proposition 65, including that it does not apply to (a) the conduct of manufacturers occurring outside the State of California; and (b) employers with less than ten (10) employees. The approval also provides that an employer may use any means of compliance in the general hazard communication requirements to comply with Proposition 65. It also requires that supplemental enforcement be subject to the supervision of the California Occupational Safety and Health Administration. Accordingly, any settlement, civil complaint, or substantive court orders in this matter must be submitted to the California Attorney General.

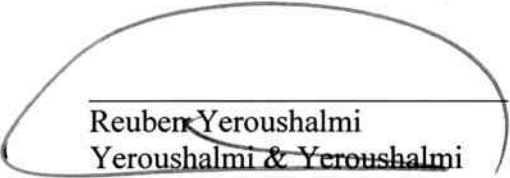
These violations occurred each day between August 21, 2012 and August 21, 2015, and are ever continuing thereafter.

The principal routes of exposure were through dermal contact, ingestion, and inhalation. Persons sustain exposures by handling the **Pruners** without wearing gloves or by touching bare skin or mucous membranes with gloves after handling **Pruners**, as well as direct and indirect hand to mouth contact, hand to food to mouth, direct contact to food then to mouth, hand to mucous membrane, or breathing in particulate matter emanating from the **Pruners** during installation and use, as well as through environmental mediums that carry the **DINP** once contained within the **Pruners**.

Proposition 65 requires that notice of intent to sue be given to the violator(s) sixty (60) days before the suit is filed. *Cal. Health & Safety Code* § 25249.7(d)(1). With this letter, CAG gives notice of the alleged violations to Violator and the appropriate governmental authorities. In absence of any action by the appropriate governmental authorities within sixty (60) calendar days of the sending of this notice (plus ten (10) calendar days because the place of address is beyond the State of California but within the United States), CAG may file suit. *See Cal. Code Civ. Proc.* § 1013; *Cal. Health & Safety Code* § 25249.7(d)(1); and *Cal. Code Regs.* tit. 27 § 25903(d)(1). CAG remains open and willing to discussing the possibility of resolving its grievances short of formal litigation.

With the copy of this notice submitted to the Violators, a copy of the following is attached: The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary.

Dated: 8/21/15

  
Reuben Yeroushalmi  
Yeroushalmi & Yeroushalmi  
Attorneys for Consumer Advocacy Group, Inc.

## 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. Please refer to the statute and OEHHA's 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.

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 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 say 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:

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<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>.

**Grace Periods.** 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 full and part-time 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 a 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.

#### **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.

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

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 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 or any reimbursement for costs and attorney's fees, if the notice of violation was served on or after October 5, 2013, and 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 as noted below) to the private party within 30 days; and
- Notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private-party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

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 greater than 750,000 in population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private-party.

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

Page 1

Date:

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.



Page 2

Date:

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 2014

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.

**Hand Tools containing DINP**

**CERTIFICATE OF MERIT**

Health and Safety Code Section 25249.7(d)

I, Reuben Yeroushalmi, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the party(s) identified in the notice(s) has violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party.
3. I have consulted with at least one person with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the action.
4. Based on the information obtained through those 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 the 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 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 Health and 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: 8/21/15

By: Reuben Yeroushalmi

**CERTIFICATE OF SERVICE**

I am over the age of 18 and not a party to this case. I am a resident of or employed in the county where the mailing occurred. My business address is 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, CA 90212.

ON THE DATE SHOWN BELOW, I SERVED THE FOLLOWING:

- 1) 60-Day Notice of Intent to Sue Under Health & Safety Code Section 25249.6
- 2) Certificate of Merit: Health and Safety Code Section 25249.7(d)
- 3) Certificate of Merit (Attorney General Copy): Factual information sufficient to establish the basis of the certificate of merit (*only sent to Attorney General*)
- 4) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary

by enclosing copies of the same in a sealed envelope, along with an unsigned copy of this declaration, addressed to each person shown below and depositing the envelope in the U.S. mail with the postage fully prepaid. Place of Mailing: Beverly Hills, CA

**Name and address of each party to whom documents were mailed:**

Nolan Archibald, CEO/ President  
Or Current President/ CEO  
The Black & Decker Corporation  
701 E. Joppa Road  
Mail Stop No. TW230  
Towson, MD 21286

Nolan Archibald, CEO/ President  
Or Current President/ CEO  
Black & Decker Corporation  
701 E. Joppa Road  
Mail Stop No. TW230  
Towson, MD 21286

John F. Lundgren, CEO  
Or Current President/ CEO  
Stanley Black & Decker, Inc.  
1000 Stanley Dr.  
New Britain, CT 06053

Nolan Archibald, CEO/ President  
Or Current President/ CEO  
Black & Decker (U.S.) Inc.  
701 E. Joppa Road  
Mail Stop No. TW230  
Towson, MD 21286

Barbara Rentler, CEO, or  
Current President/ CEO  
Ross Stores, Inc.  
5130 Hacienda Dr  
Dublin, CA 94568-7579

Barbara Rentler, CEO, or  
Current President/ CEO  
Ross Dress for Less, Inc.  
Riverside, Store: 0020  
10255 Magnolia Ave.  
Riverside, CA 92504

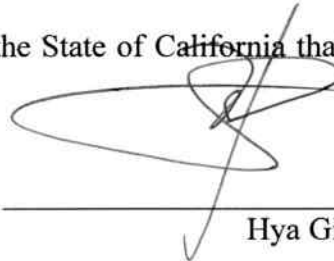
**Name and address of each public prosecutor to whom documents were mailed:**

See Distribution List

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

Date of Mailing: 8/21/2015

By: \_\_\_\_\_



Hya Gingoyon

## Distribution List

Alameda County District Attorney 1225 Fallon St, Room 900 Oakland, CA 94612	Los Angeles County District Attorney 210 W Temple St, 18th Floor Los Angeles, CA 90012	Mono County District Attorney PO Box 617 Bridgeport, CA 93517
Alpine County District Attorney PO Box 248 Markleeville, CA 96120	Madera County District Attorney 209 W Yosemite Ave Madera, CA 93637	San Joaquin County District Attorney PO Box 990 Stockton, CA 95201 -0990
Amador County District Attorney 708 Court, Suite 202 Jackson, CA 95642	Mariposa County District Attorney P.O. Box 730 Mariposa, CA 95338	San Francisco County District Attorney 850 Bryant St, Rm 322 San Francisco, CA 94103
Butte County District Attorney 25 County Center Dr. Oroville, CA 95965-3385	Marin County District Attorney 3501 Civic Center Drive, #130 San Rafael, CA 94903	San Diego County District Attorney 330 W. Broadway, Ste 1300 San Diego, CA 92101-3803
Calaveras County District Attorney 891 Mountain Ranch Road San Andreas, CA 95249	Mendocino County District Attorney P.O. Box 1000 Ukiah, CA 95482	San Bernardino County District Attorney 316 N Mountain View Ave San Bernardino, CA 92415-0004
Office of the Attorney General P.O. Box 70550 Oakland, CA 94612-0550	Los Angeles City Attorney 200 N Main St Ste 1800 Los Angeles CA 90012	San Francisco City Attorney # 1 Dr. Carlton B. Goodlett Place, Suite 234 San Francisco, CA 94102
Colusa County District Attorney Courthouse, 547 Market St. Colusa, CA 95932	Inyo County District Attorney P.O. Drawer D Independence, CA 93526	Placer County District Attorney 10810 Justice Center Drive Suite 240 Roseville, CA 95678-6231
Contra Costa County District Attorney 725 Court St., Room 402 Martinez, CA 94553	Orange County District Attorney PO Box 808 Santa Ana, CA 92702	Merced County District Attorney 650 W. 20 <sup>th</sup> Street Merced, CA 95340
Del Norte County District Attorney 450 "H" St. Crescent City, CA 95531	Nevada County District Attorney 201 Church St, Suite 8 Nevada City, CA 95959-2504	Napa County District Attorney PO Box 720 Napa, CA 94559-0720
El Dorado County District Attorney 515 Main St. Placerville, CA 95667-5697	Plumas County District Attorney 520 Main Street, Rm 404 Quincy, CA 95971	Riverside County District Attorney 3960 Orange St. Ste. 5 Riverside, CA 92501
Fresno County District Attorney 2220 Tulare St, Ste. 1000 Fresno, CA 93721	Sacramento County District Attorney 901 G Street Sacramento, CA 95814	San Benito County District Attorney 419 4th St Hollister, CA 95023
Glenn County District Attorney PO Box 430 Willows, CA 95988	San Luis Obispo County District Attorney County Government Center, Rm 450 San Luis Obispo, CA 93408	Siskiyou County District Attorney PO Box 986 Yreka, CA 96097
Humboldt County District Attorney 825 5th St., 4 <sup>th</sup> Floor Eureka, CA 95501	San Mateo County District Attorney 400 County Center Redwood City, CA 94063	Solano County District Attorney 600 Union Ave Fairfield, CA 94533
Imperial County District Attorney 939 W. Main St., 2 <sup>nd</sup> Floor El Centro, CA 92243-2860	Santa Barbara County District Attorney 1112 Santa Barbara St. Santa Barbara, CA 93101	Sonoma County District Attorney 600 Administration Dr., Rm 212-J Santa Rosa, CA 95403
Kern County District Attorney 1215 Truxtun Ave. Bakersfield, CA 93301	Santa Clara County District Attorney 70 W Hedding St. San Jose, CA 95110	Shasta County District Attorney 1525 Court St, 3rd Floor Redding, CA 96001-1632
Kings County District Attorney Gov't Ctr, 1400 W Lacey Blvd Hanford, CA 93230	Santa Cruz County District Attorney PO Box 1159 Santa Cruz, CA 95061	Sierra County District Attorney PO Box 457 Downieville, CA 95936-0457
Lake County District Attorney 255 N Forbes St Lakeport, CA 95453-4790	Stanislaus County District Attorney PO Box 442 Modesto, CA 95353	Trinity County District Attorney PO Box 310 Weaverville, CA 96093
Modoc County District Attorney 204 S. Court Street Alturas, CA 96101-4020	Sutter County District Attorney 446 Second Street Yuba City, CA 95991	Yuba County District Attorney 215 5th St Marysville, CA 95901
San Diego City Attorney City Center Plaza 1200 3rd Ave # 1100 San Diego, CA 92101	Lassen County District Attorney 200 S Lassen St, Suite 8 Susanville, CA 96130	Monterey County District Attorney PO Box 1131 Salinas, CA 93902
Tuolumne County District Attorney 2 S Green St Sonora, CA 95370	Tulare County District Attorney County Civic Center, Rm 224 Visalia, CA 93291	Yolo County District Attorney 310 Second St Woodland, CA 95695
Ventura County District Attorney 800 S Victoria Ave Ventura, CA 93009	Tehama County District Attorney P.O. Box 519 Red Bluff, CA 96080	San Jose City Attorney 151 W. Mission St. San Jose, CA 95110

SIXTY-DAY NOTICE OF INTENT TO SUE FOR VIOLATION OF THE SAFE DRINKING WATER  
AND TOXIC ENFORCEMENT ACT OF 1986  
(*Cal. Health & Safety Code § 25249.5, et seq.*) (“Proposition 65”)

October 13, 2015

Ron Merritt, Owner or  
Current President/CEO  
Bond Manufacturing Co.  
1700 West 4<sup>th</sup> Street  
Antioch, CA 94509

Macgregor Read, Current  
President/CEO  
Grocery Outlet, Inc.  
2000 Fifth St.  
Berkeley, CA 94710

Macgregor Read, Current  
President/CEO  
Grocery Outlet, Inc.  
1800 Prescott Rd.  
Modesto, CA 95350

AND THE PUBLIC PROSECUTORS LISTED ON THE DISTRIBUTION LIST ACCOMPANYING THE  
ATTACHED CERTIFICATE OF SERVICE

Re: Violations of Proposition 65 concerning **Hand Tools Containing Di (2-ethylhexyl)  
phthalate (“DEHP”)**

To whom else this may concern:

**Consumer Advocacy Group, Inc.** (“CAG”), the noticing entity, located at **9903 Santa Monica Boulevard #225, Beverly Hills, California 90212**, serves this Notice of Violation (“Notice”) on Bond Manufacturing Co., and Grocery Outlet, Inc., (collectively “Violators”) pursuant to and in compliance with Proposition 65. Violators may contact CAG concerning this Notice through its designated person within the entity, its attorney, Reuben Yeroushalmi 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, CA 90212, telephone no. (310) 623-1926, facsimile no. (310) 623-1930. This Notice satisfies a prerequisite for CAG to commence an action against Violators in any Superior Court of California to enforce Proposition 65. The violations addressed by this Notice occurred at numerous locations in each county in California as reflected in the district attorney addresses listed in the attached distribution list. CAG is serving this Notice upon each person or entity responsible for the alleged violations, the California Attorney General, the district attorney for each county where alleged violations occurred, and the City Attorney for each city with a population (according to the most recent decennial census) of over 750,000 located within counties where the alleged violations occurred.

- CAG is an organization based in California. CAG is an entity dedicated to protecting the environment, improving human health, and supporting environmentally sound practices. By sending this Notice, CAG is acting “in the public interest” pursuant to Proposition 65.
- This Notice concerns violations of the warning prong of Proposition 65, which states 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 giving clear and reasonable warning to such individual . . .” *Cal. Health & Safety Code § 25249.6*.
- **Hand Tools** contain **Di (2-ethylhexyl) phthalate (“DEHP”)**, also known as Diethyl Hexyl Phthalate and Bis (2-ethylhexyl) phthalate. CAG has discovered **Hand Tools** specifically **Bypass Pruners with Polymer Grips (“Pruners”)** containing **DEHP**. **DEHP** is known to the State of California to cause both cancer and reproductive toxicity, developmental, male. On January 1, 1988, the Governor of California added DEHP to the list of chemicals known to the State to cause cancer, and on October 24,

2003, the Governor added DEHP to the list of chemicals known to the State to cause developmental male reproductive toxicity. Both additions took place more than twenty (20) months before CAG served this Notice.

- An exemplar of the violations caused by **Pruners** includes but is not limited to:
  - **Bond® Bypass Pruner, #68WP, Drop Forged Steel, Nylon Pouch Included, UPC # 0 34613 07932 0**
- This Notice addresses consumer products exposures. A “[c]onsumer products exposure’ is an exposure which results from a person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service.” *Cal. Code Regs. 27 tit. § 25602(b)*.

Violators caused consumer product exposures in violation of Proposition 65 by producing or making available **Pruners** for distribution or sale in California to consumers. The packaging for **Pruners** (meaning any label or other written, printed or graphic matter affixed to or accompanying the product or its container or wrapper) contains no warning or Proposition 65-compliant warning. Nor did Violator, with regard to **Pruners**, provide a system of signs, public advertising identifying the system and toll-free information services, or any other system, which provided warning or clear and reasonable warnings. Nor did Violator, with regard to **Pruners**, provide identification of the product at retail outlets in a manner that provided a warning through shelf labeling, signs, menus, or a combination thereof.

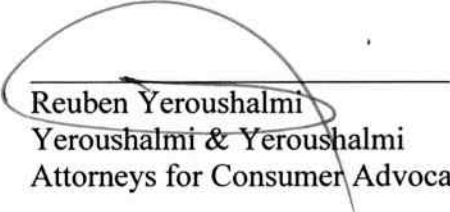
These violations occurred each day between October 13, 2012 and October 13, 2015, and are ever continuing thereafter.

The principal routes of exposure were through dermal contact, ingestion, and inhalation. Persons sustain exposures by handling the **Pruners** without wearing gloves or by touching bare skin or mucous membranes with gloves after handling **Pruners**, as well as direct and indirect hand to mouth contact, hand to food to mouth, direct contact to food then to mouth, hand to mucous membrane, or breathing in particulate matter emanating from the **Pruners** during installation and use, as well as through environmental mediums that carry the **DEHP** once contained within the **Pruners**.

Proposition 65 requires that notice of intent to sue be given to the violator(s) sixty (60) days before the suit is filed. *Cal. Health & Safety Code § 25249.7(d)(1)*. With this letter, CAG gives notice of the alleged violations to Violator and the appropriate governmental authorities. In absence of any action by the appropriate governmental authorities within sixty (60) calendar days of the sending of this notice (plus ten (10) calendar days because the place of address is beyond the State of California but within the United States), CAG may file suit. *See Cal. Code Civ. Proc. § 1013; Cal. Health & Safety Code § 25249.7(d)(1); and Cal. Code Regs. tit. 27 § 25903(d)(1)*. CAG remains open and willing to discussing the possibility of resolving its grievances short of formal litigation.

With the copy of this notice submitted to the Violators, a copy of the following is attached: The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary.

Dated: 10/13/15

  
Reuben Yeroushalmi  
Yeroushalmi & Yeroushalmi  
Attorneys for Consumer Advocacy Group, Inc.

## 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. Please refer to the statute and OEHHA's 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.

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 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 say 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:

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<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>.



**Grace Periods.** 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 full and part-time 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 a 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.

#### **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.

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2 See Section 25501(a)(4)

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 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 or any reimbursement for costs and attorney's fees, if the notice of violation was served on or after October 5, 2013, and 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 as noted below) to the private party within 30 days; and
- Notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private-party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

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 greater than 750,000 in population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private-party.

A copy of the notice of special compliance procedure and proof of compliance form is included with this notice and can be downloaded from OEHHHA's website at: <http://oehha.ca.gov/prop65/law/p65law72003.html>. The notice is reproduced here:

Date:  
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:  
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 2014

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.

**Hand Tools containing DEHP**

**CERTIFICATE OF MERIT**

Health and Safety Code Section 25249.7(d)

I, Reuben Yeroushalmi, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the party(s) identified in the notice(s) has violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party.
3. I have consulted with at least one person with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the action.
4. Based on the information obtained through those 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 the 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 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 Health and 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: 10/13/15

By: Reuben Yeroushalmi

**CERTIFICATE OF SERVICE**

I am over the age of 18 and not a party to this case. I am a resident of or employed in the county where the mailing occurred. My business address is 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, CA 90212.

ON THE DATE SHOWN BELOW, I SERVED THE FOLLOWING:

- 1) 60-Day Notice of Intent to Sue Under Health & Safety Code Section 25249.6
- 2) Certificate of Merit: Health and Safety Code Section 25249.7(d)
- 3) Certificate of Merit (Attorney General Copy): Factual information sufficient to establish the basis of the certificate of merit (*only sent to Attorney General*)
- 4) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary

by enclosing copies of the same in a sealed envelope, along with an unsigned copy of this declaration, addressed to each person shown below and depositing the envelope in the U.S. mail with the postage fully prepaid. Place of Mailing: Beverly Hills, CA

**Name and address of each party to whom documents were mailed:**

Ron Merritt, Owner or  
Current President/CEO  
Bond Manufacturing Co.  
1700 West 4<sup>th</sup> Street  
Antioch, CA 94509

Macgregor Read, Current  
President/CEO  
Grocery Outlet, Inc.  
2000 Fifth St.  
Berkeley, CA 94710

Macgregor Read, Current  
President/CEO  
Grocery Outlet, Inc.  
1800 Prescott Rd.  
Modesto, CA 95350

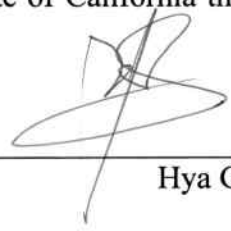
**Name and address of each public prosecutor to whom documents were mailed:**

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

Date of Mailing: 10-14-15

By: \_\_\_\_\_



Hya Gingoyon

## Distribution List

Alameda County District Attorney 1225 Fallon St, Room 900 Oakland, CA 94612	Los Angeles County District Attorney 210 W Temple St, 18th Floor Los Angeles, CA 90012	Mono County District Attorney PO Box 617 Bridgeport, CA 93517
Alpine County District Attorney PO Box 248 Markleeville, CA 96120	Madera County District Attorney 209 W Yosemite Ave Madera, CA 93637	San Joaquin County District Attorney PO Box 990 Stockton, CA 95201 -0990
Amador County District Attorney 708 Court, Suite 202 Jackson, CA 95642	Mariposa County District Attorney P.O. Box 730 Mariposa, CA 95338	San Francisco County District Attorney 850 Bryant St, Rm 322 San Francisco, CA 94103
Butte County District Attorney 25 County Center Dr. Oroville, CA 95965-3385	Marin County District Attorney 3501 Civic Center Drive, #130 San Rafael, CA 94903	San Diego County District Attorney 330 W. Broadway, Ste 1300 San Diego, CA 92101-3803
Calaveras County District Attorney 891 Mountain Ranch Road San Andreas, CA 95249	Mendocino County District Attorney P.O. Box 1000 Ukiah, CA 95482	San Bernardino County District Attorney 316 N Mountain View Ave San Bernardino, CA 92415-0004
Office of the Attorney General P.O. Box 70550 Oakland, CA 94612-0550	Los Angeles City Attorney 200 N Main St Ste 1800 Los Angeles CA 90012	San Francisco City Attorney # 1 Dr. Carlton B. Goodlett Place, Suite 234 San Francisco, CA 94102
Colusa County District Attorney Courthouse, 547 Market St. Colusa, CA 95932	Inyo County District Attorney P.O. Drawer D Independence, CA 93526	Placer County District Attorney 10810 Justice Center Drive Suite 240 Roseville, CA 95678-6231
Contra Costa County District Attorney 725 Court St., Room 402 Martinez, CA 94553	Orange County District Attorney PO Box 808 Santa Ana, CA 92702	Merced County District Attorney 650 W. 20 <sup>th</sup> Street Merced, CA 95340
Del Norte County District Attorney 450 "H" St. Crescent City, CA 95531	Nevada County District Attorney 201 Church St, Suite 8 Nevada City, CA 95959-2504	Napa County District Attorney PO Box 720 Napa, CA 94559-0720
El Dorado County District Attorney 515 Main St. Placerville, CA 95667-5697	Plumas County District Attorney 520 Main Street, Rm 404 Quincy, CA 95971	Riverside County District Attorney 3960 Orange St. Ste. 5 Riverside, CA 92501
Fresno County District Attorney 2220 Tulare St, Ste. 1000 Fresno, CA 93721	Sacramento County District Attorney 901 G Street Sacramento, CA 95814	San Benito County District Attorney 419 4th St Hollister, CA 95023
Glenn County District Attorney PO Box 430 Willows, CA 95988	San Luis Obispo County District Attorney County Government Center, Rm 450 San Luis Obispo, CA 93408	Siskiyou County District Attorney PO Box 986 Yreka, CA 96097
Humboldt County District Attorney 825 5th St., 4 <sup>th</sup> Floor Eureka, CA 95501	San Mateo County District Attorney 400 County Center Redwood City, CA 94063	Solano County District Attorney 600 Union Ave Fairfield, CA 94533
Imperial County District Attorney 939 W. Main St., 2 <sup>nd</sup> Floor El Centro, CA 92243-2860	Santa Barbara County District Attorney 1112 Santa Barbara St. Santa Barbara, CA 93101	Sonoma County District Attorney 600 Administration Dr., Rm 212-J Santa Rosa, CA 95403
Kern County District Attorney 1215 Truxtun Ave. Bakersfield, CA 93301	Santa Clara County District Attorney 70 W Hedding St. San Jose, CA 95110	Shasta County District Attorney 1525 Court St, 3rd Floor Redding, CA 96001-1632
Kings County District Attorney Gov't Ctr, 1400 W Lacey Blvd Hanford, CA 93230	Santa Cruz County District Attorney PO Box 1159 Santa Cruz, CA 95061	Sierra County District Attorney PO Box 457 Downieville, CA 95936-0457
Lake County District Attorney 255 N Forbes St Lakeport, CA 95453-4790	Stanislaus County District Attorney PO Box 442 Modesto, CA 95353	Trinity County District Attorney PO Box 310 Weaverville, CA 96093
Modoc County District Attorney 204 S. Court Street Alturas, CA 96101-4020	Sutter County District Attorney 446 Second Street Yuba City, CA 95991	Yuba County District Attorney 215 5th St Marysville, CA 95901
San Diego City Attorney City Center Plaza 1200 3rd Ave # 1100 San Diego, CA 92101	Lassen County District Attorney 200 S Lassen St, Suite 8 Susanville, CA 96130	Monterey County District Attorney PO Box 1131 Salinas, CA 93902
Tuolumne County District Attorney 2 S Green St Sonora, CA 95370	Tulare County District Attorney County Civic Center, Rm 224 Visalia, CA 93291	Yolo County District Attorney 310 Second St Woodland, CA 95695
Ventura County District Attorney 800 S Victoria Ave Ventura, CA 93009	Tehama County District Attorney P.O. Box 519 Red Bluff, CA 96080	San Jose City Attorney 151 W. Mission St. San Jose, CA 95110



SIXTY-DAY NOTICE OF INTENT TO SUE FOR VIOLATION OF THE SAFE DRINKING WATER  
AND TOXIC ENFORCEMENT ACT OF 1986  
(*Cal. Health & Safety Code* § 25249.5, *et seq.*) (“Proposition 65”)

February 2, 2016

Ron Merritt, Owner or  
Current President/CEO  
Bond Manufacturing Co., Inc.  
1700 West 4<sup>th</sup> Street  
Antioch, CA 94509

Michael Balmuth, CEO, or  
Current President/ CEO  
Ross Stores, Inc. dba dd's  
DISCOUNTS  
5130 Hacienda Dr  
Dublin, CA 94568-7579

Current President/ CEO  
Dd's Discounts  
481 E. Albertoni St.  
Suite A  
Carson, CA 90746

AND THE PUBLIC PROSECUTORS LISTED ON THE DISTRIBUTION LIST ACCOMPANYING THE  
ATTACHED CERTIFICATE OF SERVICE

Re: Violations of Proposition 65 concerning **Hand Tools Containing Di (2-ethylhexyl)  
phthalate (“DEHP”)**

To whom else this may concern:

**Consumer Advocacy Group, Inc.** (“CAG”), the noticing entity, located at **9903 Santa Monica Boulevard #225, Beverly Hills, California 90212**, serves this Notice of Violation (“Notice”) on Bond Manufacturing Co., Inc. and Ross Stores, Inc. dba dd’s Discount (collectively “Violators”) pursuant to and in compliance with Proposition 65. Violators may contact CAG concerning this Notice through its designated person within the entity, its attorney, Reuben Yeroushalmi 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, CA 90212, telephone no. (310) 623-1926, facsimile no. (310) 623-1930. This Notice satisfies a prerequisite for CAG to commence an action against Violators in any Superior Court of California to enforce Proposition 65. The violations addressed by this Notice occurred at numerous locations in each county in California as reflected in the district attorney addresses listed in the attached distribution list. CAG is serving this Notice upon each person or entity responsible for the alleged violations, the California Attorney General, the district attorney for each county where alleged violations occurred, and the City Attorney for each city with a population (according to the most recent decennial census) of over 750,000 located within counties where the alleged violations occurred.

- CAG is an organization based in California. CAG is an entity dedicated to protecting the environment, improving human health, and supporting environmentally sound practices. By sending this Notice, CAG is acting “in the public interest” pursuant to Proposition 65.
- This Notice concerns violations of the warning prong of Proposition 65, which states 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 giving clear and reasonable warning to such individual . . .” *Cal. Health & Safety Code* § 25249.6.
- CAG has discovered **Hand Tools** specifically **Bypass Pruners Sets with Plastic Grip (“Pruners”)** containing **Di (2-ethylhexyl) phthalate (“DEHP”)**, also known as Diethyl Hexyl Phthalate and Bis (2-ethylhexyl) phthalate. **DEHP** is known to the State of California to cause both cancer and reproductive

toxicity, developmental, male. On January 1, 1988, the Governor of California added DEHP to the list of chemicals known to the State to cause cancer, and on October 24, 2003, the Governor added DEHP to the list of chemicals known to the State to cause developmental male reproductive toxicity. Both additions took place more than twenty (20) months before CAG served this Notice.

- An exemplar of the violations caused by **Pruners** includes but is not limited to:
  - **Bond® Ultimate Pruning Set. 24in Bypass Looper and 8in Bypass Pruner. 'Bond Manufacturing Company', "dd's Discount, SKU: 400133438501" Made in China. "#5945" UPC: 0 35355 05945 8**
- This Notice addresses consumer products exposures. A “[c]onsumer products exposure” is an exposure which results from a person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service.” *Cal. Code Regs. 27 tit. § 25602(b)*.

Violators caused consumer product exposures in violation of Proposition 65 by producing or making available **Pruners** for distribution or sale in California to consumers. The packaging for **Pruners** (meaning any label or other written, printed or graphic matter affixed to or accompanying the product or its container or wrapper) contains no warning or Proposition 65-compliant warning. Nor did Violator, with regard to **Pruners**, provide a system of signs, public advertising identifying the system and toll-free information services, or any other system, which provided warning or clear and reasonable warnings. Nor did Violator, with regard to **Pruners**, provide identification of the product at retail outlets in a manner that provided a warning through shelf labeling, signs, menus, or a combination thereof.

- This Notice also concerns occupational exposures. An “[o]ccupational exposure” means an exposure to any employee in his or her employer’s workplace.” *Cal. Code Regs. tit. 27, § 25602(f)*.

Violator caused occupational exposures in violation of Proposition 65 by allowing employees to handle the **Pruners** in the course of packaging, shipping, distributing, promoting, and selling **Pruners** without having first given clear and reasonable warnings to such employees that by handling the **Pruners** such employees would suffer exposures to **DEHP**. Violators’ employees were exposed to **DEHP** by touching **Pruners** with their bare skin at Violators’ premises located at 481 E. Albertoni St., Suite A, Carson, CA 90746, among other locations where these activities take place including but not limited to other distributing, shipping, warehousing, packaging and retail centers. Violators did not provide any Proposition 65-compliant warnings on either the products or any substance present or any sign or system of signs within the workplace.

***This notice alleges the violation of Proposition 65*** with respect to occupational exposures governed by the California State Plan for Occupational Safety and Health. The State Plan incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997.

This approval specifically placed certain conditions with regard to occupational exposures on Proposition 65, including that it does not apply to (a) the conduct of manufacturers occurring outside the State of California; and (b) employers with less than ten (10) employees. The approval also provides that an employer may use any means of compliance in the general hazard communication requirements to comply with Proposition 65. It also requires that supplemental enforcement be subject to the supervision of the California Occupational Safety and Health Administration. Accordingly, any settlement, civil complaint, or substantive court orders in this matter must be submitted to the California Attorney General.

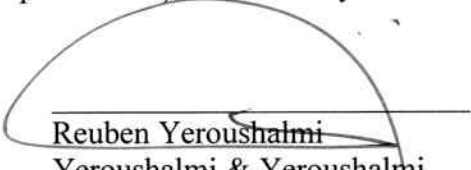
These violations occurred each day between February 2, 2013 and February 2, 2016, and are ever continuing thereafter.

The principal routes of exposure were through dermal contact, ingestion, and inhalation. Persons sustain exposures by handling the **Pruners** without wearing gloves or by touching bare skin or mucous membranes with gloves after handling **Pruners**, as well as direct and indirect hand to mouth contact, hand to food to mouth, direct contact to food then to mouth, hand to mucous membrane, or breathing in particulate matter emanating from the **Pruners** during installation and use, as well as through environmental mediums that carry the **DEHP** once contained within the **Pruners**.

Proposition 65 requires that notice of intent to sue be given to the violator(s) sixty (60) days before the suit is filed. *Cal. Health & Safety Code* § 25249.7(d)(1). With this letter, CAG gives notice of the alleged violations to Violator and the appropriate governmental authorities. In absence of any action by the appropriate governmental authorities within sixty (60) calendar days of the sending of this notice (plus ten (10) calendar days because the place of address is beyond the State of California but within the United States), CAG may file suit. *See Cal. Code Civ. Proc.* § 1013; *Cal. Health & Safety Code* § 25249.7(d)(1); and *Cal. Code Regs.* tit. 27 § 25903(d)(1). CAG remains open and willing to discussing the possibility of resolving its grievances short of formal litigation.

With the copy of this notice submitted to the Violators, a copy of the following is attached: The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary.

Dated: 2/2/16

  
Reuben Yeroushalmi  
Yeroushalmi & Yeroushalmi  
Attorneys for Consumer Advocacy Group, Inc.

## 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. Please refer to the statute and OEHHA's 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.

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 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 say 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:

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<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>.

**Grace Periods.** 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 full and part-time 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 a 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.

#### **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.

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2 See Section 25501(a)(4)

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 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 or any reimbursement for costs and attorney's fees, if the notice of violation was served on or after October 5, 2013, and 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 as noted below) to the private party within 30 days; and
- Notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private-party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

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 greater than 750,000 in population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private-party.

A copy of the notice of special compliance procedure and proof of compliance form is included with this notice and can be downloaded from OEHHHA's website at: <http://oehha.ca.gov/prop65/law/p65law72003.html>. The notice is reproduced here:

Date:  
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:  
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 2014

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.

**Hand Tools containing DEHP**

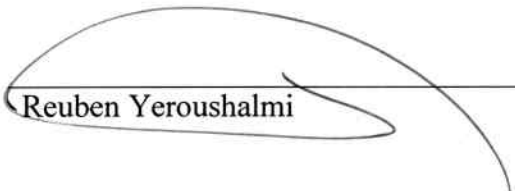
**CERTIFICATE OF MERIT**

Health and Safety Code Section 25249.7(d)

I, Reuben Yeroushalmi, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the party(s) identified in the notice(s) has violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party.
3. I have consulted with at least one person with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the action.
4. Based on the information obtained through those 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 the 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 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 Health and 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: 2/2/16

By:  Reuben Yeroushalmi

**CERTIFICATE OF SERVICE**

I am over the age of 18 and not a party to this case. I am a resident of or employed in the county where the mailing occurred. My business address is 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, CA 90212.

ON THE DATE SHOWN BELOW, I SERVED THE FOLLOWING:

- 1) 60-Day Notice of Intent to Sue Under Health & Safety Code Section 25249.6
- 2) Certificate of Merit: Health and Safety Code Section 25249.7(d)
- 3) Certificate of Merit (Attorney General Copy): Factual information sufficient to establish the basis of the certificate of merit (*only sent to Attorney General*)
- 4) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary

by enclosing copies of the same in a sealed envelope, along with an unsigned copy of this declaration, addressed to each person shown below and depositing the envelope in the U.S. mail with the postage fully prepaid. Place of Mailing: Beverly Hills, CA

**Name and address of each party to whom documents were mailed:**

Ron Merritt, Owner or Current President/CEO Bond Manufacturing Co., Inc. 1700 West 4 <sup>th</sup> Street Antioch, CA 94509	Michael Balmuth, CEO, or Current President/ CEO Ross Stores, Inc. dba dd's DISCOUNTS 5130 Hacienda Dr Dublin, CA 94568-7579	Current President/ CEO Dd's Discounts 481 E. Albertoni St. Suite A Carson, CA 90746
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**Name and address of each public prosecutor to whom documents were mailed:**

See Distribution List

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

Date of Mailing: 2-5-16

By:   
\_\_\_\_\_ Hya Gingoyon

## Distribution List

Alameda County District Attorney 1225 Fallon St, Room 900 Oakland, CA 94612	Los Angeles County District Attorney 210 W Temple St, 18th Floor Los Angeles, CA 90012	Mono County District Attorney PO Box 617 Bridgeport, CA 93517
Alpine County District Attorney PO Box 248 Markleeville, CA 96120	Madera County District Attorney 209 W Yosemite Ave Madera, CA 93637	San Joaquin County District Attorney PO Box 990 Stockton, CA 95201-0990
Amador County District Attorney 708 Court, Suite 202 Jackson, CA 95642	Mariposa County District Attorney P.O. Box 730 Mariposa, CA 95338	San Francisco County District Attorney 850 Bryant St, Rm 322 San Francisco, CA 94103
Butte County District Attorney 25 County Center Dr. Oroville, CA 95965-3385	Marin County District Attorney 3501 Civic Center Drive, #130 San Rafael, CA 94903	San Diego County District Attorney 330 W. Broadway, Ste 1300 San Diego, CA 92101-3803
Calaveras County District Attorney 891 Mountain Ranch Road San Andreas, CA 95249	Mendocino County District Attorney P.O. Box 1000 Ukiah, CA 95482	San Bernardino County District Attorney 316 N Mountain View Ave San Bernardino, CA 92415-0004
Office of the Attorney General P.O. Box 70550 Oakland, CA 94612-0550	Los Angeles City Attorney 200 N Main St Ste 1800 Los Angeles CA 90012	San Francisco City Attorney # 1 Dr. Carlton B. Goodlett Place, Suite 234 San Francisco, CA 94102
Colusa County District Attorney Courthouse, 547 Market St. Colusa, CA 95932	Inyo County District Attorney P.O. Drawer D Independence, CA 93526	Placer County District Attorney 10810 Justice Center Drive Suite 240 Roseville, CA 95678-6231
Contra Costa County District Attorney 725 Court St., Room 402 Martinez, CA 94553	Orange County District Attorney PO Box 808 Santa Ana, CA 92702	Merced County District Attorney 650 W. 20 <sup>th</sup> Street Merced, CA 95340
Del Norte County District Attorney 450 "H" St. Crescent City, CA 95531	Nevada County District Attorney 201 Church St, Suite 8 Nevada City, CA 95959-2504	Napa County District Attorney PO Box 720 Napa, CA 94559-0720
El Dorado County District Attorney 515 Main St. Placerville, CA 95667-5697	Plumas County District Attorney 520 Main Street, Rm 404 Quincy, CA 95971	Riverside County District Attorney 3960 Orange St. Ste. 5 Riverside, CA 92501
Fresno County District Attorney 2220 Tulare St, Ste. 1000 Fresno, CA 93721	Sacramento County District Attorney 901 G Street Sacramento, CA 95814	San Benito County District Attorney 419 4th St Hollister, CA 95023
Glenn County District Attorney PO Box 430 Willows, CA 95988	San Luis Obispo County District Attorney County Government Center, Rm 450 San Luis Obispo, CA 93408	Siskiyou County District Attorney PO Box 986 Yreka, CA 96097
Humboldt County District Attorney 825 5th St., 4 <sup>th</sup> Floor Eureka, CA 95501	San Mateo County District Attorney 400 County Center Redwood City, CA 94063	Solano County District Attorney 600 Union Ave Fairfield, CA 94533
Imperial County District Attorney 939 W. Main St., 2 <sup>nd</sup> Floor El Centro, CA 92243-2860	Santa Barbara County District Attorney 1112 Santa Barbara St. Santa Barbara, CA 93101	Sonoma County District Attorney 600 Administration Dr., Rm 212-J Santa Rosa, CA 95403
Kern County District Attorney 1215 Truxtun Ave. Bakersfield, CA 93301	Santa Clara County District Attorney 70 W Hedding St. San Jose, CA 95110	Shasta County District Attorney 1525 Court St, 3rd Floor Redding, CA 96001-1632
Kings County District Attorney Gov't Ctr, 1400 W Lacey Blvd Hanford, CA 93230	Santa Cruz County District Attorney PO Box 1159 Santa Cruz, CA 95061	Sierra County District Attorney PO Box 457 Downieville, CA 95936-0457
Lake County District Attorney 255 N Forbes St Lakeport, CA 95453-4790	Stanislaus County District Attorney PO Box 442 Modesto, CA 95353	Trinity County District Attorney PO Box 310 Weaverville, CA 96093
Modoc County District Attorney 204 S. Court Street Alturas, CA 96101-4020	Sutter County District Attorney 446 Second Street Yuba City, CA 95991	Yuba County District Attorney 215 5th St Marysville, CA 95901
San Diego City Attorney City Center Plaza 1200 3rd Ave # 1100 San Diego, CA 92101	Lassen County District Attorney 200 S Lassen St, Suite 8 Susanville, CA 96130	Monterey County District Attorney PO Box 1131 Salinas, CA 93902
Tuolumne County District Attorney 2 S Green St Sonora, CA 95370	Tulare County District Attorney County Civic Center, Rm 224 Visalia, CA 93291	Yolo County District Attorney 310 Second St Woodland, CA 95695
Ventura County District Attorney 800 S Victoria Ave Ventura, CA 93009	Tehama County District Attorney P.O. Box 519 Red Bluff, CA 96080	San Jose City Attorney 151 W. Mission St. San Jose, CA 95110