



C A L I F O R N I A

DEPARTMENT OF JUSTICE

Rob Bonta
Attorney General

1515 CLAY STREET, 20TH FLOOR
P.O. BOX 70550
OAKLAND, CA 94612-0550

Public: (510) 879-1300
Telephone: (510) 879-1300
Facsimile: (510) 622-2270
E-Mail: Susan.Fiering@doj.ca.gov

July 25, 2025

By Electronic Transmission

Jonathan Genish, Esq.
8383 Wilshire Blvd., Suite 745
Beverly Hills, CA 90211
jgenish@blackstonepc.com

By U.S. Mail

Ahron Nami
P.O. Box 2305
Huntington Park, CA 90255

RE: Proposition 65 Notice No. 2025-1369

Dear Mr. Genish and Mr. Nami:

We write to you pursuant to the Attorney General's authority under Health and Safety Code section 25249.7, subdivision (e)(1)(A), which is part of the Safe Drinking Water and Toxic Enforcement Act of 1986, commonly known as "Proposition 65." We have reviewed the above 60-day notice of violation and accompanying certificate of merit that Consumer Protection Group, LLP ("CPG"), sent to Burlington Coat Factory of Texas, Inc., on April 29, 2025. The notice alleges that the company sells products that expose persons to Di(2-ethylhexyl) phthalate (DEHP) without providing a clear and reasonable warning.

Based on our review of the notice, we have concluded that you have failed to provide sufficient information to indicate that there is a credible basis to conclude that there is merit to each element of the action on which plaintiff will have the burden of proof and that the information relied on does not prove that any affirmative defense has merit. The 60-day notice does not give CPG authority to file suit in the public interest, or to settle claims based on the alleged violations. We ask that you withdraw the notice immediately. Our position is discussed in more detail below.

Proposition 65 requires companies with 10 or more employees to provide clear and reasonable warnings to persons prior to knowingly and intentionally exposing them to chemicals known to cause cancer or reproductive toxicity. (Health & Saf. Code, § 25249.6.) Persons

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acting in the public interest can bring a private action to enforce Proposition 65 at least sixty days after sending a 60-day notice to the alleged violators and public enforcers, unless the Attorney General or other public enforcer is diligently prosecuting an action against the violation. (*Id.*, § 25249.7, subd. (d).) Before sending a 60-day notice alleging a failure to warn, the private enforcer must consult with an expert who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical. Based on the consultation, the person sending the notice or his or her attorney must execute a certificate of merit stating his or her belief that, based on the consultation, “there is a reasonable and meritorious case for the private action.” (*Id.*, subd. (d)(1).) The enforcer must attach to the Attorney General’s copy of the certificate of merit factual information sufficient to establish the basis of the certificate of merit. The Attorney General must maintain this information in confidence. (*Id.*, subds. (d)(1), (i).) The certificate of merit must document both exposure to the chemical and that there “is merit to each element of the action on which the plaintiff will have the burden of proof.” (Cal. Code Regs., tit. 11, § 3101, subd. (a).) Further, the certifier must certify that “the information relied upon does not prove that any affirmative defense has merit.” (*Ibid.*) If the Attorney General believes there is no merit to the action after reviewing the certificate of merit and meeting and conferring with the private enforcer, the Attorney General must serve a letter on the noticing party and the alleged violator stating this position and make the letter available to the public. (Health & Saf. Code, § 25249.7, subd. (e)(1).)

The referenced 60-day notice alleges that the company exposes persons to DEHP in certain products without providing the required warning. We are not able to disclose the contents of the supporting information for the certificate of merit. However, based on our review, we have concluded that you have failed to provide sufficient information to indicate that there is a credible basis to conclude that there is merit to each element of the action on which plaintiff will have the burden of proof and that the information relied upon does not prove that any affirmative defense has merit. Thus, the 60-day notice does not give CPG authority to file suit in the public interest, or to settle claims based on the alleged violations, and we ask that you withdraw the notice immediately.

Sincerely,

/S/ Susan S. Fiering

SUSAN S. FIERING
Deputy Attorney General

For ROB BONTA
Attorney General

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cc: By U.S. Mail

Michael O'Sullivan, CEO
Burlington Coat Factory of Texas, Inc.
1830 Route 130 North
Burlington, NJ 08016

Burlington Coat Factory of Texas, Inc.
c/o CT Corporation System, Reg. Agent
330 N. Brand Blvd, Suite 700
Glendale, CA 91203

SF1994IN0809