ABC, Inc.

Human Resources Department

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, CA

Re: **Demand for Employee Exposure and Medical Records Pursuant to CAL/OSHA Regulation 8 CCR §3204**

Employee:

SSN:

Date of Birth:

Approx. Dates of Employment:

To Whom It May Concern:

This office has been engaged to represent Mr. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to investigate injuries which we suspect were caused by his exposure to toxic chemicals in the course of his employment. Since I am informed that you are the company’s Director of Human Resources for the facility where Mr. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ worked, I am addressing this letter to you.

In order to identify the particular chemicals to which Mr. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ was exposed in his employment and which may have caused or contributed to his injury, we need to promptly obtain exposure and medical records in the possession of the company. I therefore enclose an Authorization for Inspection and Copying of Records, executed by Mr. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, authorizing the company to provide us copies of the requested records.

To assist you in satisfying this request for employee exposure and medical records, we provide the following information:

Mr. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ began working for the company in approximately \_\_\_\_\_\_\_ and ended his employment in approximately \_\_\_\_\_. Throughout his employment, Mr. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ worked in the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Department, working out of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ location. If you need any additional information to help you identify and locate the records that must be produced, please call us at any time.

Employers in California that use hazardous chemicals have been required since 1994 to obtain and maintain copies of the Material Safety Data Sheets (MSDSs) - now referred to Safety Data Sheets (SDSs) - from the supplier of the chemicals. *See*, the OSHA Hazard Communication Standard (HCS) 29 CFR §1910.1200(g)(8) and the Cal-OSHA equivalent at 8 CCR §5194.

The Cal/OSHA General Industry Safety Orders §3204, *“Access to Employee Exposure and Medical Records”* (8 Code of California Regulations §3204) and 29 Code of Federal Regulations §1910.1020, mandates that Mr. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s employers obtain and keep records of his exposure to various chemicals, maintain the records for at least **30 years**, and make them promptly available to Mr. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ upon his representative’s request.

In particular, 8 CCR §3204(e)(1)(A) states: *“Whenever an employee or designated representative requests access to a record, the employer shall assure that access is provided in a reasonable time, place, and manner, but* ***in no event later than fifteen (15) days after the request for access is made.****”*

The term “employee” includes a former employee, and is defined by 8 CCR §3204(c)(4) as follows: *“Employee. A current employee, a former employee, or an employee being assigned or transferred to work where there will be exposure to toxic substances or harmful physical agents. For the purpose of this section, a deceased or legally incapacitated employee's legal representative may exercise all of the employee's rights under this section.”*

**Pursuant to these regulations, we hereby demand on behalf of Mr.** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**, that you provide the following records to us within 15 days, i.e., no later than** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **.** The enclosed authorization requests production of all employee exposure records and medical records relevant to Mr. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s employment, as well as any analysis that was performed using his exposure or medical records. This request includes, but is not limited to the following documents:

1. All records of environmental (workplace) monitoring or measuring at the workplace of toxic substances or harmful physical agents, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretation of the results obtained.

1. All biological monitoring results at the workplace which directly assess the absorption of a toxic substance or harmful physical agent by body systems (e.g., the level of chemical in the blood, urine, breath, hair, fingernails, etc.).

1. All records, such as chemical inventories or any other record, which reveal the identity (e.g., chemical, common, or trade name) of toxic substances or harmful physical agents that were used at the workplace (whether personally used by Mr. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ or not) and where and when the toxic substances or harmful physical agents were used.

Note: The term “*used at the workplace”* includes past exposure and potential (e.g., accidental or possible) exposure.

1. A list of the name and last know address of every manufacturer and supplier that supplied any toxic substance or harmful physical agent used at the workplace during Mr. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s employment.

1. All Material Safety Data Sheets (and Safety Data Sheets) for the toxic substance or harmful physical agent supplied to the company during Mr. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s employment.
2. All purchase orders, invoices, packing slips and bills of lading for the toxic substances or harmful physical agents used at your company’s facility(ies) during the time period of Mr. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s employment at your company’s facility(

Please be advised that a *“toxic substance or harmful physical agent”* is defined under the Cal/OSHA regulations (8 CCR §3204(c)(13)) as follows:

Any chemical substance, biological agent (bacteria, virus, fungus, etc.), or physical stress (noise, heat, cold, vibration, repetitive motion, ionizing and non-ionizing radiation, hypo- or hyperbaric pressure, etc.) which:

(A) Is regulated by any California or Federal law or rule due to a hazard to health;

(B) Is listed in the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) (See Appendix B);

(C) Has yielded positive evidence of an acute or chronic health hazard in human, animal, or other biological testing conducted by, or known to, the employer; or

(D) Is the subject of a material safety data sheet kept by or known to the employer which indicates that the material may pose a hazard to human health.

In producing the requested documents, the company must search not only its current records, but also all closed files, files in storage, and archival files, whether in hard copy, microfilm, microfiche, or magnetic media. In particular, **historical Material Safety Data Sheets also need to be produced, rather than only producing the current Safety Data Sheets on file.**

**The requested records must be provided to the employee or his designated representative (i.e. our office) free of charge.** See, 8 CCR §3204(e)(C).

Please note, if you fail to timely comply with this request and the applicable Cal/OSHA regulations, **Cal/OSHA may consider the destruction or failure to maintain, retain, or provide the requested employee exposure information as a “*serious violation*” of the Safety Orders and may subject your employer to various fines and penalties.** *See*, Division of Occupational Safety and Health Policy and Procedures Manual, P&P C-38, “*Access to Employee Exposure and/or Medical Records*”.

Also note, Health and Safety Code §25249.7 provides for a maximum penalty of $2,500 per day if a person, in the course of doing business, knowingly and intentionally exposes 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.

If you have any questions regarding this matter, please do not hesitate to call. I will endeavor to provide you and the company with any information you need in order to provide us with all the requested records within the time required by law.

Very truly yours,