

SECOND SUPPLEMENTAL 60-DAY NOTICE OF VIOLATION

SENT IN COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE § 25249.7(d)

DATE: April 5, 2012

TO: Attallah Amash, President – Amash Imports, Inc.
Attallah Amash, President – Michigan Industrial Tools
Steven Fishman, President – Big Lots, Inc.
Steven Fishman, President – Big Lots Stores, Inc.
Gregory Henslee, Co-President – O’Reilly Automotive, Inc.
Ted Wise, Co-President – O’Reilly Automotive Stores, Inc.
Louis D’Ambrosio, President – Sears Holdings Corporation
Jeffrey Bezos, President – Amazon.com, Inc.
California Attorney General’s Office;
District Attorney’s Office for 58 Counties; and
City Attorneys for San Francisco, San Diego, San Jose, Sacramento and Los Angeles

FROM: Russell Brimer

I. INTRODUCTION

My name is Russell Brimer. I am a citizen of the State of California acting in the interest of the general public. I seek to promote awareness of exposures to toxic chemicals in products sold in California and, if possible, to improve human health by reducing hazardous substances contained in such items. This Notice is provided to the public agencies listed above pursuant to California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”) and supplements the 60-Day Notices of Violation sent on February 1, 2011 and November 22, 2011. As noted above, notice is also being provided to the alleged violators, Amash Imports, Inc., Michigan Industrial Tools, Big Lots, Inc., Big Lots Stores, Inc., O’Reilly Automotive, Inc., O’Reilly Automotive Stores, Inc., Sears Holdings Corporation and Amazon.com, Inc. (the “Violators”). The violations covered by this Notice consist of the product exposures, routes of exposure, and types of harm potentially resulting from exposure to the toxic chemicals (“listed chemicals”) identified below, as follows:

Product Exposure: See Section VII. Exhibit A
Listed Chemicals: Lead; Di(2-ethylhexyl)phthalate (“DEHP”); Di-n-butyl phthalate (“DBP”)
Routes of Exposure: Ingestion, Dermal
Types of Harm: Birth Defects and Other Reproductive Harm

II. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

The specific types of products that are causing consumer and occupational exposures in violation of Proposition 65, and that are covered by this Notice, are listed under “Product Category/Type” in Exhibit A in Section VII below. All products within the types covered by this Notice shall be referred to

hereinafter as the “products.” The sales of these products in California dating as far back as April 5, 2009 are subject to this Notice. As a result of the sales of these products, exposures to the listed chemicals have been occurring without clear and reasonable warnings as required by Proposition 65. Without proper warnings regarding the toxic effects of exposure to the listed chemicals resulting from contact with the products, California citizens lack the information necessary to make informed decisions on whether and how to eliminate (or reduce) the risk of exposure to the toxic chemicals from the reasonably foreseeable use of the products.

A. CONSUMER PRODUCT EXPOSURE (DEHP, DBP)

California citizens, through the act of buying, acquiring or utilizing the products, are exposed to the listed chemicals. Women of childbearing age ingest the listed chemicals when they, among other activities, touch the products and transfer the listed chemicals from the products to their mouths through hand-to-mouth activities that may continue to occur for a significant period after contact with the products stops. Women of childbearing age are exposed to the listed chemicals through direct dermal contact when they, among other activities, handle, touch or otherwise use the products.

B. CONSUMER PRODUCT EXPOSURE (LEAD)

California consumers, through the act of buying, acquiring or utilizing the products, are exposed to the listed chemical. By way of example but not limitation, exposures occur when California citizens use, display, clean, repair, pack, unpack, arrange, store or otherwise handle the products. These tasks cause consumers to be exposed directly or indirectly through the routine touching of the parts or portions of the products containing readily available surface amounts of the listed chemical. Additionally, exposure can occur through the routine touching and ingesting of other materials that are contaminated with the listed chemical from the products as a result of these tasks. People likely to be exposed include both children and adults.

C. OCCUPATIONAL EXPOSURE (LEAD)

Similarly, men and women in California use or otherwise handle the products as a part of their jobs and are, therefore, subject to occupational exposures to the listed chemical. Employees are exposed at any California business locations of the apparent manufacturer, distributor and retailer (and their agents, assigns and divisions) as well as all other California locations where the products, or the component parts thereof that include the listed chemical are, by way of example but not limitation, used, packed, unpacked, labeled, arranged, displayed, cleaned, stocked, stored, repaired or otherwise handled. These tasks cause employee exposure directly and/or indirectly to the listed chemical through the routine touching of the parts or portions of the products containing readily available amounts of the listed chemical on the surface. Additionally, exposure can occur through the routine touching and ingesting of other materials that are contaminated with the listed chemical from the products as a result of these tasks. These products are also used by sole proprietors and other persons in settings not covered by the federal Occupational Safety Health Act (“OSHA”). This Notice alleges the violation of Proposition 65 with respect to occupational exposure governed by the California State Plan for Occupational Safety and Health (the “State Plan”). The State Plan incorporates the provisions of Proposition

65, as approved by 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 the conduct of manufacturers occurring outside the State of California. The approval also provides that an employer may use the means of compliance contained in the general hazard communication requirement to comply with Proposition 65. It also requires that supplemental enforcement is 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.

III. CONTACT INFORMATION

Please direct all questions concerning this notice to me through my counsel's office at the following address:

Russell Brimer
c/o Josh Voorhees
The Chanler Group
Parker Plaza
2560 Ninth Street, Suite 214
Berkeley, CA 94710
Telephone: (510) 848-8880

IV. PROPOSITION 65 INFORMATION

For general information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health Hazard Assessment's ("OEHHA") Proposition 65 Implementation Office at (916) 445-6900. For the Violators' reference, I have attached a copy of "Proposition 65: A Summary" which has been prepared by OEHHA.

V. RESOLUTION OF NOTICED CLAIMS

Based on the allegations set forth in this Notice, I intend to file a citizen enforcement lawsuit against the alleged Violators unless such Violators enter into a binding written agreement to: (1) recall products already sold or undertake best efforts to ensure that the requisite health hazard warnings are provided to those who have received such products; (2) provide clear and reasonable warnings for products sold in the future or reformulate such products to eliminate the exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health & Safety Code § 25249.7(b). If the alleged Violators are interested in resolving this dispute without resorting to time-consuming and expensive litigation, please feel free to contact my counsel identified in Section III above. It should be noted that neither my counsel nor I can: (1) finalize any settlement until after the 60-day notice period has expired; nor (2) speak for the Attorney General or any District or City Attorney who received this Notice. Therefore, while reaching an agreement with me will resolve my claims, such agreement may not satisfy the public prosecutors.

VI. ADDITIONAL NOTICE INFORMATION

Identified below are specific examples of products recently purchased and witnessed as being available for purchase or use in California that are within the categories or types of offending products covered by this Notice. Based on publicly available information, the retailers, distributors and/or manufacturers of the examples within the categories or types of products are also provided below. I believe and allege that the sale of the offending products also has occurred without the requisite Proposition 65 “clear and reasonable warnings” at one or more locations and/or via other means including, but not limited to, transactions made over-the-counter, business-to-business, through the internet and/or via a catalog by the Violators and other distributors and retailers of the manufacturer.

<i>Product*</i>	<i>Retailer(s)</i>	<i>Manufacturer(s)/Distributor(s)</i>
Adjustable Rapid Wrench, #2318 (#0 20209 02318 1)	Big Lots Stores, Inc.; Big Lots, Inc. Alameda County, Northern California	Amash Imports, Inc.; Michigan Industrial Tools
Adjustable Rapid Wrench, #2318 (#0 20209 02318 1)	Kragen Auto Parts; O’Reilly Automotive Stores, Inc.; O’Reilly Automotive, Inc. Alameda County, Northern California	Amash Imports, Inc.; Michigan Industrial Tools
Adjustable Rapid Wrench with Bonus Pocket Hercules, #23183 (#0 20209 23183 8)	Sears Holdings Corporation (http://www.searsoutlet.com)	Amash Imports, Inc.; Michigan Industrial Tools
Tekton Fiberglass 16oz Rubber Mallet, #3166 (#0 20209 03166 7)	O’Reilly Automotive Stores, Inc.; O’Reilly Automotive, Inc. Alameda County, Northern California	Amash Imports, Inc.; Michigan Industrial Tools
Tekton Fiberglass 16oz Claw Hammer, #3040 (#0 20209 03040 0)	Kragen Auto Parts; O’Reilly Automotive Stores, Inc.; O’Reilly Automotive, Inc. Alameda County, Northern California	Amash Imports, Inc.; Michigan Industrial Tools
Tekton Fiberglass 3LB Sledge Hammer, #3110 (#0 20209 03110 0)	O’Reilly Automotive Stores, Inc.; O’Reilly Automotive, Inc. Alameda County, Northern California	Amash Imports, Inc.; Michigan Industrial Tools
Tekton 2 Piece Telescoping Pick-Up/ Inspection Set, #7619 (#0 20209 07619 4)	O’Reilly Automotive Stores, Inc.; O’Reilly Automotive, Inc. Alameda County, Northern California	Amash Imports, Inc.; Michigan Industrial Tools
Tekton 4-in-1 Hacksaw Set, #6817 (#0 20209 06817 5)	O’Reilly Automotive Stores, Inc.; O’Reilly Automotive, Inc. Alameda County, Northern California	Amash Imports, Inc.; Michigan Industrial Tools

VI. ADDITIONAL NOTICE INFORMATION (continued)

<i>Product*</i>	<i>Retailer(s)</i>	<i>Manufacturer(s)/Distributor(s)</i>
Tekton 8-in-1 Snap Ring Pliers Set, #3578 (#0 20209 03578 8)	O'Reilly Automotive Stores, Inc.; O'Reilly Automotive, Inc. Santa Clara County, Northern California	Amash Imports, Inc.; Michigan Industrial Tools
Tekton 8" Long Nose Pliers, #3511 (#0 20209 03511 5)	O'Reilly Automotive Stores, Inc.; O'Reilly Automotive, Inc. Santa Clara County, Northern California	Amash Imports, Inc.; Michigan Industrial Tools
Tekton 5 Piece Internal External Snap Ring Pliers Set, #3580 (#0 20209 03580 1)	O'Reilly Automotive Stores, Inc.; O'Reilly Automotive, Inc. San Luis Obispo County, Northern California	Amash Imports, Inc.; Michigan Industrial Tools
ImageWorks Farm Country 6 Piece Household Tool Set, #18774 (#0 20209 18774 6)	Amazon.com, Inc. (http://www.amazon.com)	Amash Imports, Inc.; Michigan Industrial Tools

VII. EXHIBIT A

1. Product Category/Type Applicable to Amash Imports, Inc. and Michigan Industrial Tools:		
<i>Product Category/Type</i>	<i>Such As*</i>	<i>Toxins</i>
Tools with Grips	Adjustable Rapid Wrench, #2318 (#0 20209 02318 1); Tekton Fiberglass 16oz Claw Hammer, #3040 (#0 20209 03040 0); Tekton Fiberglass 3LB Sledge Hammer, #3110 (#0 20209 03110 0)	Lead

VII. EXHIBIT A (continued)

<i>Product Category/Type</i>	<i>Such As*</i>	<i>Toxins</i>
Tools with Grips	<p>Tekton 2 Piece Telescoping Pick-Up/ Inspection Set, #7619 (#0 20209 07619 4);</p> <p>Tekton 4-in-1 Hacksaw Set, #6817 (#0 20209 06817 5);</p> <p>Tekton 8-in-1 Snap Ring Pliers Set, #3578 (#0 20209 03578 8);</p> <p>Tekton 8" Long Nose Pliers, #3511 (#0 20209 03511 5);</p> <p>Tekton 5 Piece Internal External Snap Ring Pliers Set, #3580 (#0 20209 03580 1)</p>	Di(2-ethylhexyl)phthalate
Tools with Grips	<p>Adjustable Rapid Wrench with Bonus Pocket Hercules, #23183 (#0 20209 23183 8);</p> <p>Tekton Fiberglass 16oz Rubber Mallet, #3166 (#0 20209 03166 7)</p>	Lead; Di(2-ethylhexyl)phthalate
Tools with Grips	ImageWorks Farm Country 6 Piece Household Tool Set, #18774 (#0 20209 18774 6)	Lead; Di(2-ethylhexyl)phthalate; Di-n-butyl phthalate

2. Product Category/Type Applicable to Big Lots Stores, Inc. and Big Lots, Inc.:

<i>Product Category/Type</i>	<i>Such As*</i>	<i>Toxins</i>
Tools with Grips	Adjustable Rapid Wrench, #2318 (#0 20209 02318 1)	Lead

3. Product Category/Type Applicable to Kragen Auto Parts, O'Reilly Automotive Stores, Inc. and O'Reilly Automotive, Inc.:

<i>Product Category/Type</i>	<i>Such As*</i>	<i>Toxins</i>
Tools with Grips	<p>Adjustable Rapid Wrench, #2318 (#0 20209 02318 1);</p> <p>Tekton Fiberglass 16oz Claw Hammer, #3040 (#0 20209 03040 0);</p> <p>Tekton Fiberglass 3LB Sledge Hammer, #3110 (#0 20209 03110 0)</p>	Lead

VII. EXHIBIT A (continued)

<i>Product Category/Type</i>	<i>Such As*</i>	<i>Toxins</i>
Tools with Grips	Tekton 2 Piece Telescoping Pick-Up/ Inspection Set, #7619 (#0 20209 07619 4); Tekton 4-in-1 Hacksaw Set, #6817 (#0 20209 06817 5); Tekton 8-in-1 Snap Ring Pliers Set, #3578 (#0 20209 03578 8); Tekton 8" Long Nose Pliers, #3511 (#0 20209 03511 5); Tekton 5 Piece Internal External Snap Ring Pliers Set, #3580 (#0 20209 03580 1)	Di(2-ethylhexyl)phthalate
Tools with Grips	Tekton Fiberglass 16oz Rubber Mallet, #3166 (#0 20209 03166 7)	Lead; Di(2-ethylhexyl)phthalate

4. Product Category/Type Applicable to Sears Holdings Corporation:

<i>Product Category/Type</i>	<i>Such As*</i>	<i>Toxins</i>
Tools with Grips	Adjustable Rapid Wrench with Bonus Pocket Hercules, #23183 (#0 20209 23183 8)	Lead; Di(2-ethylhexyl)phthalate

5. Product Category/Type Applicable to Amazon.com, Inc.:

<i>Product Category/Type</i>	<i>Such As*</i>	<i>Toxins</i>
Tools with Grips	ImageWorks Farm Country 6 Piece Household Tool Set, #18774 (#0 20209 18774 6)	Lead; Di(2-ethylhexyl)phthalate; Di-n-butyl phthalate

*The specifically identified examples of the types of product that are subject to this Notice are for the recipients' benefit to assist in their investigation of, among other things, the magnitude of potential exposure to the listed chemicals from other items within the product categories/types listed in Exhibit A. It is important to note that these examples are not meant to be an exhaustive or comprehensive identification of each specific offending product of the types listed under "Product Category/Type" in Exhibit A. Further, it is this citizen's position that the alleged Violators are obligated to continue to conduct in good faith an investigation into other specific products within the types or categories described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipients' custody or control) during the relevant period so as to ensure that the requisite toxic warnings were and are provided to California citizens prior to purchase.

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury:

I am a citizen of the United States, over the age of 18 years, and not a party to the within action; my business address is Parker Plaza, 2560 Ninth Street, Suite 214, Berkeley, CA 94710.

On April 5, 2012, I served the following documents:

SECOND SUPPLEMENTAL 60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(d);

PROPOSITION 65: A SUMMARY;

CERTIFICATE OF MERIT; AND

CERTIFICATE OF MERIT ATTACHMENTS (SERVED ONLY ON THE ATTORNEY GENERAL)

on the alleged Violators listed below via First Class Certified Mail through the United States Postal Service by placing a true and correct copy in a sealed envelope, addressed to the entities listed below and providing each envelope to a United States Postal Service Representative:

Attallah Amash, President
Amash Imports, Inc.
3707 Roger B. Chaffee Memorial Drive SE
Grand Rapids, MI 49548

Attallah Amash, President
Michigan Industrial Tools
3707 Roger B. Chaffee Memorial Drive SE
Grand Rapids, MI 49548

Steven Fishman, President
Big Lots, Inc.
300 Phillipi Road
Columbus, OH 43228

Gregory Henslee, Co-President
Tim Wise, Co-President
O'Reilly Automotive, Inc.
233 South Patterson
Springfield, MO 65802

Gregory Henslee, Co-President
Tim Wise, Co-President
O'Reilly Automotive Stores, Inc.
233 South Patterson
Springfield, MO 65802

Steven Fishman, President
Big Lots Stores, Inc.
300 Phillipi Road
Columbus, OH 43228

Louis D'Ambrosio, President
Sears Holdings Corporation
3333 Beverly Road
Hoffman Estates, IL 60179

Jeffrey Bezos, President
Amazon.com, Inc.
410 Terry Avenue North
Seattle, WA 98109

Jeffrey Bezos, President
Amazon.com, Inc.
P.O. Box 81226
Seattle, WA 98108

as well as providing copies of the notice to the public enforcers by placing a true and correct copy in a sealed envelope, addressed to each party listed below, and served as follows:

<i>Via 2nd Day Air Service by placing such envelope in a Federal Express Drop-Off Box:</i>	The Attorney General of the State of California;
<i>By placing each envelope in a United States Postal Service mailbox, postage prepaid:</i>	The District Attorney for Each of the 58 counties in California; and The City Attorney for Los Angeles, San Diego, San Jose, San Francisco and Sacramento;

A list of addresses for each of these recipients is attached.

Executed on April 5, 2012, at Berkeley, California.



Eleanor Chen-Ranstrom

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Clifford A. Chanler, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the parties identified in the notice have violated Health and Safety Code § 25249.6 by failing to provide clear and reasonable warnings;
2. I am the attorney for the noticing party;
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the *alleged* exposure to the listed chemicals that is the subject of this 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 plaintiff’s case can be established and the information did not prove that the alleged Violators will be able to establish any of the affirmative defenses set forth in the statute;
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including information identified in Health and Safety Code § 25249.7(h)(2) (*i.e.*, (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons).

Dated: April 5, 2012



Clifford A. Chanler