

SECOND SUPPLEMENTAL 60-DAY NOTICE OF VIOLATION

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

DATE: December 20, 2012

TO: Roman Ferber, President – FKA Distributing Co.
Roman Ferber, President – Homedics-U.S.A., Inc.
Arthur Stark, President – Bed Bath & Beyond Inc.
Hubert Joly, Chief Executive Officer – Best Buy Co., Inc.
Michael Duke, President – Wal-Mart Stores, Inc.
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: John Moore

I. INTRODUCTION

My name is John Moore. 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 September 19, 2011 and November 2, 2012. As noted above, notice is also being provided to the alleged violators, FKA Distributing Co., Homedics-U.S.A., Inc., Bed Bath & Beyond Inc., Best Buy Co., Inc., Wal-Mart Stores, Inc. 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: 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 December 20, 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. 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.

III. CONTACT INFORMATION

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

John Moore
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 DEHP and DBP 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 product covered by this Notice. Based on publicly available information, the retailers, distributors and/or manufacturers of the examples within the categories or types of product 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> |
|-------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|------------------------------------------------|
| HMDX Audio Speaker-On-The-Go | Kohl’s Corporation Sacramento County, Northern California | FKA Distributing Co.; Homedics-U.S.A., Inc. |
| HDMX Go Portable Speaker Case, Model # HX-GO3PRPLDA (#0 31262 04976 6) | Bed Bath & Beyond Inc. Monterey County, Northern California | FKA Distributing Co.; Homedics-U.S.A., Inc. |
| HDMX Go Portable Speaker Case, Model # HX-GO3PRA (#0 31262 04972 8) | Best Buy Co., Inc. Alameda County, Northern California | FKA Distributing Co.; Homedics-U.S.A., Inc. |
| HDMX Go Portable Speaker Case, Model # HX-GO3SVA (#0 31262 04971 1) | Wal-Mart Stores, Inc. Alameda County, Northern California | FKA Distributing Co.; Homedics-U.S.A., Inc. |
| Homedics The Crash Pad Instant Folding Bed, HMS-3MAT (#0 31262 04521 8) | Amazon.com, Inc. (http://www.amazon.com) | FKA Distributing Co.; Homedics-U.S.A., Inc. |

VII. EXHIBIT A

| <i>Product Category/Type</i> | <i>Such As*</i> | <i>Toxins</i> |
|------------------------------------------------------------------------------|------------------------------|---------------------------|
| Portable Speaker Cases with Zipper Pulls containing Di(2-thylhexyl)phthalate | HMDX Audio Speaker-On-The-Go | Di(2-ethylhexyl)phthalate |

VII. EXHIBIT A (continued)

| <i>Product Category/Type</i> | <i>Such As*</i> | <i>Toxins</i> |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------------|---------------------------|
| Portable Speaker Cases with Zipper Pulls containing Di-n-butyl phthalate | HMDX Audio Speaker-On-The-Go | Di-n-butyl phthalate |
| Portable Speaker Cases with Cords containing Di(2-thylhexyl)phthalate | HMDX Audio Speaker-On-The-Go | Di(2-ethylhexyl)phthalate |
| Portable Speaker Cases with Cords containing Di(2-thylhexyl)phthalate | HDMX Go Portable Speaker Case, Model # HX-GO3PRPLDA (#0 31262 04976 6) | Di(2-ethylhexyl)phthalate |
| Portable Speaker Cases with Cords containing Di(2-thylhexyl)phthalate | HDMX Go Portable Speaker Case, Model # HX-GO3PRA (#0 31262 04972 8) | Di(2-ethylhexyl)phthalate |
| Portable Speaker Cases with Cords and Zipper Pulls containing Di(2-thylhexyl)phthalate | HDMX Go Portable Speaker Case, Model # HX-GO3SVA (#0 31262 04971 1) | Di(2-ethylhexyl)phthalate |
| Folding Beds/Mats containing Di(2-thylhexyl)phthalate | Homedics The Crash Pad Instant Folding Bed, HMS-3MAT (#0 31262 04521 8) | Di(2-ethylhexyl)phthalate |

*The specifically identified examples of the types of products 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 December 20, 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:

Roman Ferber, President
FKA Distributing Co.
3000 North Pontiac Trail
Commerce Township, MI 48390

Roman Ferber, President
Homedics-U.S.A., Inc.
3000 North Pontiac Trail
Commerce Township, MI 48390

Arthur Stark, President
Bed Bath & Beyond Inc.
650 Liberty Avenue
Union, NJ 07083

Hubert Joly, Chief Executive Officer
Best Buy Co., Inc.
7601 Penn Avenue South
Richfield, MN 55423

Michael Duke, President
Wal-Mart Stores, Inc.
702 SW 8th Street
Bentonville, AR 72716

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

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 December 20, 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: December 20, 2012



Clifford A. Chanler