

# SECOND SUPPLEMENTAL 60-DAY NOTICE OF VIOLATION

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

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**DATE:** March 29, 2012

**TO:** John Chang, Chief Executive Officer – Kiss Nail Products, Inc.  
John Chang, Chief Executive Officer – Kiss Products, Inc.  
Louis D’Ambrosio, President – Kmart Corporation  
Larry Merlo, President – CVS Caremark Corporation  
Gregory Wasson, President – Walgreen Co.  
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:** Anthony E. Held, Ph.D., P.E.

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## I. INTRODUCTION

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My name is Anthony E. Held. I hold a Doctor of Philosophy degree in Environmental Engineering and I am a registered professional engineer in the State of California. 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 December 21, 2010 and September 1, 2011. As noted above, notice is also being provided to the alleged violators, Kiss Nail Products, Inc., Kiss Products, Inc., Kmart Corporation, CVS Caremark Corporation and Walgreen Co. (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”);  
Lead; Toluene  
Routes of Exposure: Ingestion, Dermal, Inhalation  
Types of Harm: Birth Defects and Other Reproductive Harm

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## II. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

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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 March 29, 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)**

California citizens, through the act of buying, acquiring or utilizing the cosmetic bags/kits containing DEHP are exposed to this listed chemical. Infants, children, and/or women of childbearing age ingest the listed chemical when they, among other activities, place the product, or a portion thereof, into their mouth, or otherwise suck, lick, teethe and/or bite the product thereby allowing the listed chemical to leach out of the substrate directly into their mouths. Infants, children and/or women of childbearing age ingest the listed chemical when they, among other activities, touch the products and transfer the listed chemical 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. Infants, children and/or women of childbearing age are exposed to the listed chemical through direct dermal contact when they, among other activities, handle, touch or otherwise use the products.

**B. CONSUMER PRODUCT EXPOSURE (DBP)**

California citizens, through the act of applying, wearing and/or utilizing the liquid nail products containing DBP are exposed to this listed chemical. Women of childbearing age ingest the listed chemical when they, among other activities, apply, wear or use the product and transfer the listed chemical to their mouths through hand-to-mouth activities that may continue to occur for a significant period after the product is applied. Women of childbearing age are exposed to the listed chemical through direct dermal contact when they, among other activities, apply, wear, or otherwise use the products.

**C. CONSUMER PRODUCT EXPOSURE (TOLUENE)**

California citizens through the act of applying, wearing and/or utilizing the liquid nail products containing Toluene are exposed to this listed chemical. By way of example but not limitation, exposures occur when California citizens apply, wear, use, or otherwise handle the products. These tasks cause consumers to be exposed directly or indirectly through the routine application or use of the products containing readily available amounts of the listed chemical. Women of childbearing age inhale the listed chemical when, among other activities, they breathe indoor air with airborne particles that are released from the products containing the listed chemical during application. People likely to be exposed include adults.

**D. CONSUMER PRODUCT EXPOSURE (LEAD)**

California citizens through the act of preparing, applying, wearing, or utilizing the acrylic powder products containing lead are exposed to this listed chemical. By way of example but not limitation, exposures occur when California citizens prepare, apply, wear, or otherwise handle the products. These tasks cause consumers to be exposed directly or indirectly through the routine application or use 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 adults.

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### III. CONTACT INFORMATION

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

Anthony E. Held, Ph.D., P.E.  
c/o Josh Voorhees  
The Chanler Group  
Parker Plaza  
2560 Ninth Street, Suite 214  
Berkeley, CA 94710  
Telephone: (510) 848-8880

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### IV. PROPOSITION 65 INFORMATION

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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.

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### V. RESOLUTION OF NOTICED CLAIMS

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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.

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### VI. ADDITIONAL NOTICE INFORMATION

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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.

**VI. ADDITIONAL NOTICE INFORMATION (continued)**

<i>Product*</i>	<i>Retailer(s)</i>	<i>Manufacturer(s)/Distributor(s)</i>
Kiss Professional Pedicure Kit, #51048, RPK01 (#7 31509 51048 5)	Kmart Corporation Sacramento County, Northern California	Kiss Nail Products, Inc.; Kiss Products, Inc.
Kiss Professional Pedicure Kit, #51048, RPK01 (#7 31509 51048 5)	Walgreen Co. Placer County, Northern California	Kiss Nail Products, Inc.; Kiss Products, Inc.
Kiss Professional Pedicure Kit, #51048, RPK01 (#7 31509 51048 5)	Walgreen Co. ( <a href="http://www.walgreen.com">http://www.walgreen.com</a> )	Kiss Nail Products, Inc.; Kiss Products, Inc.
Kiss Professional Pedicure Kit, #51048, RPK01 (#7 31509 510 48 5)	Black Hairspray ( <a href="http://www.blackhairspray.com">http://www.blackhairspray.com</a> )	Kiss Nail Products, Inc.; Kiss Products, Inc.
Kiss Professional Manicure Kit, #51047, RPK01 (#7 31509 51047 8)	Walgreen Co. Los Angeles County, Southern California El Dorado County, Northern California Placer County, Northern California	Kiss Nail Products, Inc.; Kiss Products, Inc.
Kiss Professional Manicure Kit, #51047, RPK01 (#7 31509 51047 8)	Walgreen Co. ( <a href="http://www.walgreen.com">http://www.walgreen.com</a> )	Kiss Nail Products, Inc.; Kiss Products, Inc.
Kiss Acrylic Refill Kit, #40003, AK300 (#7 31509 40003 8)	My Beauty Mart ( <a href="http://www.mybeautymart.com">http://www.mybeautymart.com</a> )	Kiss Nail Products, Inc.; Kiss Products, Inc.
Kiss Complete Acrylic Glitter Kit, #53822, AGK100 (#7 31509 53822 9)	Beauty Mart Alameda County, Northern California	Kiss Nail Products, Inc.; Kiss Products, Inc.
Kiss Complete Acrylic Glitter Kit, #53822, AGK100 (#7 31509 53822 9)	Queen's Beauty Supply Alameda County, Northern California	Kiss Nail Products, Inc.; Kiss Products, Inc.

**VI. ADDITIONAL NOTICE INFORMATION (continued)**

<i>Product*</i>	<i>Retailer(s)</i>	<i>Manufacturer(s)/Distributor(s)</i>
Kiss Complete Acrylic Sculpture Kit, #13020, AK100 (#7 31509 13020 1)	Beauty Mart Alameda County, Northern California	Kiss Nail Products, Inc.; Kiss Products, Inc.
Kiss Salon Results Professional Manicure Products Nail Developer, #BK115 (#7 31509 13002 7; #7 31509 13005 8)	My Beauty Mart ( <a href="http://www.mybeautymart.com">http://www.mybeautymart.com</a> )	Kiss Nail Products, Inc.; Kiss Products, Inc.
Kiss French Acrylic Sculpture Kit, #00003, AK104 (#7 31509 00003 0)	CVS Caremark Corporation El Dorado County, Northern California	Kiss Nail Products, Inc.; Kiss Products, Inc.

**VII. EXHIBIT A**

**1. Product Category/Type Applicable to Kiss Nail Products, Inc. and Kiss Products, Inc.:**

<i>Product Category/Type</i>	<i>Such As*</i>	<i>Toxins</i>
Cosmetic Cases/Bags	Kiss Professional Pedicure Kit, #51048, RPK01 (#7 31509 51048 5)  Kiss Professional Manicure Kit, #51047, RPK01 (#7 31509 51047 8)  Kiss Acrylic Refill Kit, #40003, AK300 (#7 31509 40003 8)  Kiss Complete Acrylic Glitter Kit, #53822, AGK100 (#7 31509 53822 9)  Kiss Complete Acrylic Sculpture Kit, #13020, AK100 (#7 31509 13020 1)	Di(2-ethylhexyl)phthalate
Liquid Nail Products	Kiss Salon Results Professional Manicure Products Nail Developer, #BK115 (#7 31509 13002 7; #7 31509 13005 8)	Di-n-butyl phthalate

**VII. EXHIBIT A (continued)**

<i>Product Category/Type</i>	<i>Such As*</i>	<i>Toxins</i>
Liquid Nail Products	Kiss Salon Results Professional Manicure Products Nail Developer, #BK115 (#7 31509 13002 7; #7 31509 13005 8)	Toluene
Acrylic Powders	Kiss French Acrylic Sculpture Kit, #00003, AK104 (#7 31509 00003 0)	Lead

**2. Product Category/Type Applicable to Kmart Corporation:**

<i>Product Category/Type</i>	<i>Such As*</i>	<i>Toxins</i>
Cosmetic Cases/Bags	Kiss Professional Pedicure Kit, #51048, RPK01 (#7 31509 51048 5)	Di(2-ethylhexyl)phthalate

**3. Product Category/Type Applicable to CVS Caremark Corporation:**

<i>Product Category/Type</i>	<i>Such As*</i>	<i>Toxins</i>
Acrylic Powders	Kiss French Acrylic Sculpture Kit, #00003, AK104 (#7 31509 00003 0)	Lead

**4. Product Category/Type Applicable to Walgreen Co.:**

<i>Product Category/Type</i>	<i>Such As*</i>	<i>Toxins</i>
Cosmetic Cases/Bags	Kiss Professional Pedicure Kit, #51048, RPK01 (#7 31509 51048 5)  Kiss Professional Manicure Kit, #51047, RPK01 (#7 31509 51047 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 March 29, 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:

John Chang, Chief Executive Officer  
Kiss Nail Products, Inc.  
57 Seaview Boulevard  
Port Washington, NY 11050

John Chang, Chief Executive Officer  
Kiss Products, Inc.  
57 Seaview Boulevard  
Port Washington, NY 11050

Larry D'Ambrosio, President  
Kmart Corporation  
3333 Beverly Road  
Hoffman Estates, IL 60179

Larry Merlo, President  
CVS Caremark Corporation  
One CVS Drive  
Woonsocket, RI 02895

Gregory Wasson, President  
Walgreen Co.  
108 Wilmot Road  
Deerfield, IL 60015

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 2<sup>nd</sup> 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 March 29, 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: March 27, 2012

  
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Clifford A. Chanler