

# SUPPLEMENTAL 60-DAY NOTICE OF VIOLATION

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

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**DATE:** July 12, 2013

**TO:** Michael Polk, President – Newell Rubbermaid Inc.  
Doug McGraw, President – Graco Children’s Products Inc.  
W. Craig Jelinek, President – Costco Wholesale Corporation  
Gregg Steinhafel, President – Target 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:** Laurence Vinocur

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## I. INTRODUCTION

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My name is Laurence Vinocur. 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 Notice of Violation sent on January 4, 2013. As noted above, notice is also being provided to the alleged violators, Newell Rubbermaid Inc., Graco Children’s Products Inc., Costco Wholesale Corporation, Target 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: Tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”);  
Di(2-ethylhexyl)phthalate (“DEHP”); Lead  
Routes of Exposure: Ingestion, Dermal, Inhalation  
Types of Harm: Birth Defects and Other Reproductive Harm; Cancer

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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.” Exposures to the listed chemicals from the use of the products have been occurring without clear and reasonable warnings as required by Proposition 65, dating as far back as October 28, 2012 (for TDCPP) and July 12, 2010 (for DEHP and Lead). 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 (TDCPP)**

California citizens, including infants and children, through the act of buying, acquiring or utilizing the products, are exposed to the listed chemical. California citizens, including infants and children, 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. California citizens, including infants and children, are exposed to the listed chemical through direct dermal contact when they, among other activities, handle, touch or otherwise use the products. California citizens, including infants and children, 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.

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

California citizens, through the act of buying, acquiring or utilizing the products, are exposed to the listed chemical. 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.

**C. 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 children and adults.

**D. 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.

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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:

Laurence Vinocur  
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.

## 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 retailers and distributors of the manufacturer.

<i>Product*</i>	<i>Retailer(s)</i>	<i>Manufacturer(s)/Distributor(s)</i>
Graco Pack ‘n Play Portable Playard, Item #1804109, #100611 (#0 47406 11471 9)	Costco Wholesale Corporation Contra Costa County, Northern California	Newell Rubbermaid Inc.; Graco Children’s Products Inc.
Graco My Ride 70 Convertible Car Seat, Marston Fashion, Item #1365, Model #1829471 (#0 47406 11814 4)	Target Corporation San Mateo County, Northern California	Newell Rubbermaid Inc.; Graco Children’s Products Inc.
Graco Car Seat Protector, AC020T, #081804 (#0 47406 05317 9)	Amazon.com, Inc. ( <a href="http://www.amazon.com">http://www.amazon.com</a> )	Newell Rubbermaid Inc.; Graco Children’s Products Inc.

## VII. EXHIBIT A

<i>Product Category/Type</i>	<i>Such As*</i>	<i>Toxins</i>
Playards/Bassinets with Foam Padding containing Tris(1,3-dichloro-2-propyl) phosphate	Graco Pack ‘n Play Portable Playard, Item #1804109, #100611 (#0 47406 11471 9)	Tris(1,3-dichloro-2-propyl) phosphate
Car Seats with Foam Padding containing Tris(1,3-dichloro-2-propyl) phosphate	Graco My Ride 70 Convertible Car Seat, Marston Fashion, Item #1365, Model #1829471 (#0 47406 11814 4)	Tris(1,3-dichloro-2-propyl) phosphate

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**VII. EXHIBIT A (continued)**

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<i>Product Category/Type</i>	<i>Such As*</i>	<i>Toxins</i>
Vinyl/PVC Car Seat Protectors containing Di(2-ethylhexyl)phthalate	Graco Car Seat Protector, AC020T, #081804 (#0 47406 05317 9)	Di(2-ethylhexyl)phthalate
Vinyl/PVC Car Seat Protectors containing Lead	Graco Car Seat Protector, AC020T, #081804 (#0 47406 05317 9)	Lead

\*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 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 July 12, 2013, I served the following documents:

**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 entities 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:

Michael Polk, President  
Newell Rubbermaid Inc.  
3 Glenlake Parkway NE  
Atlanta, GA 30328

Doug McGraw, President  
Graco Children's Products Inc.  
3 Glenlake Parkway NE  
Atlanta, GA 30328

W. Craig Jelinek, President  
Costco Wholesale Corporation  
999 Lake Drive  
Issaquah, WA 98027

Gregg Steinhafel, President  
Target Corporation  
1000 Nicollet Mall  
Minneapolis, MN 55403

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

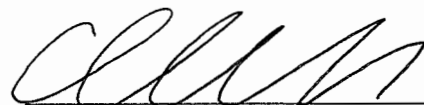
Jeffrey Bezos, President  
Amazon.com, Inc.  
P.O. Box 81226  
Seattle, WA 98108

as well as by providing copies of the above documents electronically uploaded to the public enforcers according to directions from their respective offices, and/or by placing a true and correct copy in a sealed envelope, addressed to each party listed below, and served as follows:

<i>Electronically Uploaded to the Attorney General's website, and sent 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 July 12, 2013, at Berkeley, California.



Caroline Liang


# 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: July 12, 2013



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Clifford A. Chanler