

# SUPPLEMENTAL 60-DAY NOTICE OF VIOLATION

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

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**DATE:** August 1, 2012

**To:** Jodi Berman, Chief Operating Officer – Silvertop Associates, 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:** Anthony E. Held, Ph.D., P.E.

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## I. INTRODUCTION

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 Notice of Violation sent on December 13, 2011. As noted above, notice is also being provided to the alleged violator, Silvertop Associates, Inc. (the "Violator"). 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 VI. Exhibit A                                                                                                                              |
| Listed Chemicals:   | Di(2-ethylhexyl)phthalate ("DEHP"); Di-n-butyl phthalate ("DBP");<br>Butyl benzyl phthalate ("BBP"); Lead and/or Lead Compounds;<br>Formaldehyde (gas) |
| Routes of Exposure: | Ingestion, Dermal, Inhalation                                                                                                                          |
| Types of Harm:      | Cancer and/or Birth Defects and Other Reproductive Harm                                                                                                |

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## 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 VI 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 August 1, 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 AND BBP)**

California citizens, through the act of buying, acquiring or utilizing the products, are exposed to the listed chemicals. Infants, children and/or women of childbearing age ingest the listed chemicals 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 chemicals to leach out of the substrate directly into their mouths. Infants, children and/or 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. Infants, children and/or 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 AND FORMALDEHYDE)**

California consumers, through the act of buying, acquiring or utilizing the products, are exposed to the listed chemicals. 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 chemicals. Additionally, exposure can occur through the routine touching and ingesting of other materials that are contaminated with the listed chemicals from the products as a result of these tasks. Consumers inhale the listed chemicals when, among other activities, they breathe indoor air with airborne particles that are released from the products containing the listed chemicals. People likely to be exposed include both children and 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 Violator's 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 Violator unless such Violator enters 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 whom 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 Violator is interested in resolving this dispute without resort 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. EXHIBIT A**

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| <i>Product Category/Type</i>                                                                                                                                                                                                                              | <i>Such As</i>                                                           | <i>Toxins</i>                                                                                                            |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|
| Halloween Costumes containing one or more of the chemicals listed herein.                                                                                                                                                                                 |                                                                          | Di(2-ethylhexyl)phthalate; Di-n-butyl phthalate; Butyl benzyl phthalate; Lead and/or Lead Compounds; Formaldehyde (gas). |
| Halloween Costume Accessories, specifically wigs, masks, gloves, footwear, belts, bags, hats, costume props, hosiery, weapons and jewelry intended to accessorize a costume (but excluding makeup) containing one or more of the chemicals listed herein. | The Bag Bootique by Rasta Imposta Cauldron Bag, #5906 (#7 91249 59060 4) | Di(2-ethylhexyl)phthalate; Di-n-butyl phthalate; Butyl benzyl phthalate; Lead and/or Lead Compounds; Formaldehyde (gas). |

# 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 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, CA 94710.

On August 1, 2012, 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 alleged Violator 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 entity listed below and providing such envelope to a United States Postal Service Representative:

Jodi Berman, Chief Operating Officer  
Silvertop Associates, Inc.  
600 East Clements Bridge Road  
Runnemede, NJ 08078

on counsel for such Violator listed below via First Class Mail through the United States Postal Service by placing a true and correct copy in a sealed envelope, addressed to such person and providing such envelope to a United States Postal Service Representative:

J. Robert Maxwell  
Rogers Joseph O'Donnell  
311 California Street, 10<sup>th</sup> Floor  
San Francisco, CA 94104

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<br><br>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 August 1, 2012, at Berkeley, California.



Eleanor Chen-Ranstrom

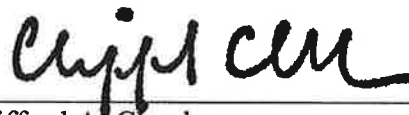
# CERTIFICATE OF MERIT

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 the party identified in the notice has 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, including the Certification received from the alleged Violator, 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 Violator 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, (2) the facts, studies, or other data reviewed by those persons, and (3) the Certification received from the alleged Violator).

Dated: August 1, 2012



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Clifford A. Chanler