

# SUPPLEMENTAL 60-DAY NOTICE OF VIOLATION

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

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DATE: July 25, 2018

TO: Curtis Jackson III, Chief Executive Officer – G-Unit Brands, Inc.  
Brian Nohe, President – SMS Audio, LLC  
David Brandon, Chief Executive Officer – Toys “R” Us, 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: Peter Englander

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## I. INTRODUCTION

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My name is Peter Englander. 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 August 1, 2017. As noted above, notice is also being provided to the alleged violators, G-Unit Brands, Inc., SMS Audio, LLC and Toys “R” Us, Inc. (the “Violators”). The violations covered by this Notice consist of the product exposure, routes of exposure and types of harm potentially resulting from exposure to the toxic chemical (“Listed Chemical”) identified below, as follows:

Product Exposure: See Section VII. Exhibit A  
Listed Chemical: Di(2-ethylhexyl)phthalate (“DEHP”)  
Routes of Exposure: Ingestion, Dermal  
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 type of product that is causing consumer exposures in violation of Proposition 65, and that is covered by this Notice, is listed under “Product Category/Type” in Exhibit A in Section VII. All products within the category covered by this Notice shall be referred to hereinafter as the “Products.” Exposures to the Listed Chemical from the use of the Products have been occurring without the “clear and reasonable warning” required by Proposition 65, dating as far back as July 25, 2015. Without proper warnings regarding the toxic effects of exposures to the Listed Chemical 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 Listed Chemical 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 Chemical. By way of example, consumers and other individuals, including women of childbearing age 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. Additionally, consumers and other individuals, including women of childbearing age and children, are exposed to the Listed Chemical through direct dermal contact when they, among other activities, handle, touch or otherwise use the Products. The California State Plan for Occupational Safety and Health incorporates the provisions of Proposition 65, as approved by Federal 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 in the general hazard communication requirements 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 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:

Peter Englander  
c/o Laralei S. Paras  
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 "The Safe Drinking Water and Toxic Enforcement Act of 1986 (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 DEHP 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 costly litigation, please feel free to contact my counsel identified in Section III. 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 the Products recently purchased and witnessed as being available for purchase or use in California that are within the category or type of offending Product covered by this Notice. Based on publicly available information, the retailers, distributors and/or manufacturers of the examples within the category or type of Product are also provided below. I believe and allege that the sale of the offending Products has also occurred without the requisite Proposition 65 “clear and reasonable warning” 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>
KidzSafe My Design Headphones, Model No: KS-GDIY-ROH-PNK-PP, #56300915, UPC #8 12184 01317 8	Toys “R” Us, Inc. Alameda County, California	G-Unit Brands, Inc.; SMS Audio, LLC
KidzSafe My Design Headphones, Model No: KS-BDIY-ROH-GRY, #56491115, UPC #8 12184 01276 8	G-Unit Brands, Inc. (www.gunitbrands.com)	G-Unit Brands, Inc.; SMS Audio, LLC

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## VII. EXHIBIT A

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<i>Product Category/Type</i>	<i>Such As*</i>	<i>Toxicant(s)</i>
Headphones with Vinyl/PVC Components	KidzSafe My Design Headphones, Model No: KS-GDIY-ROH-PNK-PP, #56300915, UPC #8 12184 01317 8  KidzSafe My Design Headphones, Model No: KS-BDIY-ROH-GRY, #56491115, UPC #8 12184 01276 8	Di(2-ethylhexyl)phthalate

\*The specifically identified examples of the 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 exposures to the Listed Chemical from other items within the product category/type 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 type 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 type or category 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. I am employed in Alameda County, California. My business address is 2560 Ninth Street, Suite 214, Berkeley, CA 94710.

On July 25, 2018, I caused to be served the following documents:

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

**CERTIFICATE OF MERIT; AND**

**THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY**

XXXX **By First Class Certified Mail** through the United States Postal Service by placing true and correct copies of the above documents in a sealed envelope, addressed to each alleged violator listed below and providing such envelope to a United States Postal Service Representative.

Curtis Jackson III, Chief Executive Officer  
G-Unit Brands, Inc.  
21731 Ventura Blvd Ste 300  
Woodland Hills, CA 91364

Curtis Jackson III, Chief Executive Officer  
G-Unit Brands, Inc.  
1601 SW 1<sup>st</sup> Way Suite 17  
Deerfield Beach, FL 33441

Brian Nohe, President  
SMS Audio, LLC  
2885 South Congress Ave Ste D  
Delray Beach, FL 33445

David Brandon, Chief Executive Officer  
Toys “R” Us, Inc.  
1 Geoffrey Way  
Wayne, NJ 07470

On July 25, 2018, I caused to be served the following documents:

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

**CERTIFICATE OF MERIT**

XXXX **By First Class Mail** through the United States Postal Service by placing true and correct copies of the above documents in a sealed envelope, addressed to each entity on the attached “Mail Service List” and providing such envelope to a United States Postal Service Representative, postage prepaid.

XXXX **By Electronic Mail** by sending true and correct copies of the above documents to the electronic notification (Email) address(es) on the attached “Email Service List”.

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On July 25, 2018, I caused to be served the following documents:

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

**CERTIFICATE OF MERIT; AND**

**CERTIFICATE OF MERIT ATTACHMENTS**

XXXX **By Electronic Upload** by causing true and correct copies of the above documents to be uploaded to the California Attorney General's website at the web address on the attached "Electronic Upload Service List".

Executed on July 25, 2018, at Berkeley, California.



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Lindsey Cady

# 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 supplemental sixty-day notice in which it is alleged that the parties identified in the supplemental 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 Chemical 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 under Health and Safety Code § 25249.7(h)(2) including (i) the identity of the persons consulted with and relied on by the certifier, and (ii) certain facts, studies, or other data reviewed by those persons.

Dated: July 25, 2018



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Clifford A. Chanler

# MAIL SERVICE LIST

The Honorable Nancy O'Malley  
Alameda County District Attorney  
1225 Fallon Street, Room 900  
Oakland, CA 94612

The Honorable Michael Atwell  
Alpine County District Attorney  
P.O. Box 248  
Markleeville, CA 96120

The Honorable Todd Riebe  
Amador County District Attorney  
708 Court Street  
Jackson, CA 95642

The Honorable Michael Ramsey  
Butte County District Attorney  
25 County Center Drive, Suite 245  
Oroville, CA 95965

The Honorable Barbara Yook  
Calaveras County District Attorney  
891 Mountain Ranch Road  
San Andreas, CA 95249

The Honorable Matthew R. Beauchamp  
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The Honorable Diana Becton  
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450 H Street, Room 171  
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The Honorable Vern Pierson  
El Dorado County District Attorney  
515 Main Street  
Placerville, CA 95667

The Honorable Lisa Smittcamp  
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The Honorable Dwayne Stewart  
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P.O. Box 430  
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Humboldt County District Attorney  
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The Honorable C. David Eyster  
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Ukiah, CA 95482

The Honorable Larry Morse II  
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550 W. Main Street  
Merced, CA 95340

The Honorable Jordan Funk  
Modoc County District Attorney  
204 S. Court Street, Suite 202  
Alturas, CA 96101

The Honorable Tim Kendall  
Mono County District Attorney  
P.O. Box 617  
Bridgeport, CA 93517

The Honorable Clifford Newell  
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Nevada City, CA 95959

The Honorable Tony Rackauckas  
Orange County District Attorney  
401 Civic Center Drive West  
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520 Main Street, Room 404  
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Sacramento, CA 95814

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303 West 3rd Street, 6th Floor  
San Bernardino, CA 92415-0502

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San Jose, CA 95113

## EMAIL SERVICE LIST

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## ELECTRONIC UPLOAD SERVICE LIST

Office of the California Attorney General  
Proposition 65 Enforcement Reporting  
ATTN: Prop 65 Coordinator  
P.O. Box 70550  
Oakland, CA 94612-0550  
<https://oag.ca.gov/prop65/add-60-day-notice>