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November 17, 2008

ATTORNEY GENERAL COPY: CONTAINS OFFICIAL INFORMATION PER EVIDENCE CODE § 1040

NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.

Dear Public Enforcement Agencies:

Shute, Mihaly & Weinberger LLP ("Firm") represents As You Sow ("AYS"), a non-profit foundation organized under California's Non-Profit Public Benefit Corporation Law. AYS is dedicated to, among other causes, the protection of the environment, the promotion of human health, the improvement of worker and consumer safety, and environmental education.

This firm and AYS have documented violations of California's Safe Drinking Water & Toxic Enforcement Act of 1986 ("Proposition 65"), codified at Health & Safety Code §25249.5 et seq. This letter serves to provide this Firm's and AYS' notification of these violations to the public enforcement agencies and to the violator. Pursuant to §25249.7(d) of the statute, this Firm intends to bring an enforcement action on behalf of AYS sixty (60) days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

A summary of the statute and its implementing regulations, which was prepared by the lead agency designated under the statute, is enclosed with the copy of this notice served upon the violator. The specific details of the violations that are the subject of this notice are provided below.

Alleged violators. The name of the violator covered by this notice is Office Depot, Incorporated.

Chemicals. These violations involve exposures to Di(2-ethylhexyl) phthalate (DEHP) from the products listed below. On October 24, 2003, the State of California officially listed DEHP as a chemical known to cause reproductive toxicity. On January 1, 1988, the State of California officially listed DEHP as a chemical known to cause cancer.

These violations also involve exposures to Di-n-butyl phthalate (DBP) from the products listed below. On December 2, 2005, the State of California officially listed DBP as a chemical known to cause reproductive toxicity.

Consumer products. The products that are the subject of this notice are Tug Backpacks, including but not limited to backpacks identified by UPC # 735854904517, sold and/or distributed at Office Depot, Incorporated, in California.

Route of exposure. Use of the product identified in this notice results in human exposures to DEHP and DBP. The routes of exposure include ingestion via hand to mouth contact after consumers, including children, touch or handle the product; dermal absorption directly through the skin and eyes when consumers, including children, touch or handle the product; inhalation when consumers, including children, breathe near the products; and direct ingestion if consumers, including children, put the product directly into their mouth. No clear and reasonable warning is provided with this product regarding the carcinogenic or reproductive hazards of DEHP and DBP.

Duration of violations. Each of these ongoing violations has occurred on every day since at least November 17, 2007, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are removed from the products.

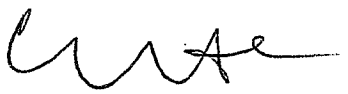
Pursuant to Title 11, C.C.R. § 3100, a certificate of merit is attached hereto.

In keeping with its public interest mission and to expeditiously rectify these ongoing violations of California law, AYS is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation. Please direct all communications regarding this notice to AYS' counsel in this matter:

Ellison Folk
Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, CA 94102
PH: 415.552.7272; Fax: 415.552.5816
Email: efolk@smwlaw.com

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Ellison Folk

Enclosures: Certificate of Merit (including supporting documentation)
Proof of Service

[P:\AYS\Office Depot\mer002 (Prop 65 notice for Office Depot - AG version).wpd]

CERTIFICATE OF MERIT
(Notice of Proposition 65 Violation on Office Depot, Inc.)

I, Ellison Folk, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the party in the notice has violated section 25249.6 of the Health and Safety Code by failing to provide clear and reasonable warnings.
2. I am an 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 exposure to the listed chemicals that are the subject of the 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 that 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 the information identified in section 25249.7(h)(2) of the Health and Safety Code, i.e., (1) the identify of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: 11-17-08

Ellison Folk

Enclosure (For Attorney General Copy only)

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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

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: 396 Hayes Street, San Francisco, CA 94102.

On November 17, I served the following documents:

- Notice of Violation of California Health & Safety Code § 25249.5 et seq.
- Certificate of Merit
- "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary"

on the following party by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below, and depositing it at a United States Postal Service Office for delivery by Certified Mail:

Steve Odland CEO
Office Depot, Inc.
2200 Old Germantown Rd.
Delray Beach, FL 33445

On November 17, I served the following document(s):

- Notice of Violation of California Health & Safety Code § 25249.5 et seq.
- Certificate of Merit, including Supporting Documentation Required by Title 11, C.C.R. § 3102

on the following party by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below, and depositing it at a United States Postal Service Office for delivery by Certified Mail:

Attn: Ed Weil, Deputy Attorney General
California Department of Justice
P.O. Box 70550
Oakland, CA 94612-0550

On November 17, I served the following document(s):

- Notice of Violation of California Health & Safety Code § 25249.5 et seq.
- Certificate of Merit

on each of the parties on the service list attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the service list attached hereto, and depositing it at United States Postal Service mail box for delivery by First Class Mail.

Executed on November 17, 2008, at San Francisco, California.

PSpencer

Patricia Spencer

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