

# SUPPLEMENTAL 60-DAY NOTICE OF VIOLATION

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

**DATE:** August 14, 2009

**TO:** Larry Rupp, President – Navajo Manufacturing Company  
Michael T. Duke, President – Wal-Mart Stores, 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.

## 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 parties listed above pursuant to California Health & Safety Code §25249.6 *et seq.* ("Proposition 65") and supplements the 60-Day Notice of Violation sent on July 10, 2008. As noted above, notice is being provided to the violators, Navajo Manufacturing Company and Wal-Mart Stores, Inc. (the "Violators"). The violations covered by this Notice consist of the product exposures, routes of exposures, 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

## 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 VII below. All products within the types covered by this Notice shall be referred to hereinafter as the "products." The sales of these products dating as recently as January 6, 2009 are subject to this notice. As a result of the sales of these products, exposures to the listed chemical have been occurring without clear and reasonable warnings as required by Proposition 65. 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 toxic 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 but not limitation, exposures occur when infants and children place the product, or a portion thereof, into their mouth, or otherwise suck, lick, teethe and/or bite the product. In addition, exposures occur through direct dermal contact with the products, and may continue to occur for a significant period after the products are removed from the skin. These activities cause infants and children to be exposed directly through migration of the listed chemical from the products. People likely to be exposed are infants and children.

### **III. CONTACT INFORMATION**

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 Clifford A. Chanler  
Hirst & Chanler LLP  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710  
Telephone: (510) 848-8880

### **IV. PROPOSITION 65 INFORMATION**

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.

### **V. RESOLUTION OF NOTICED CLAIMS**

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) provide clear and reasonable warnings for products sold in the future or reformulate such products to eliminate the DEHP exposures; and (2) 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 resort to time-consuming 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 as to new products covered by this Notice 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**

*THIS INFORMATION IS NOT REQUIRED TO BE PROVIDED UNDER TITLE 27 CAL. CODE REGS., §25903(b)(2)(A).*

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.

<i>Product*</i>	<i>Retailer(s)</i>	<i>Manufacturer(s)/Distributor(s)</i>
Designer Eyewear Case, No. 92812 (#0 24291 92812 6)	Wal-Mart Stores, Inc. Sacramento County, Northern California	Navajo Manufacturing Company
Sports Eyewear Cord, No. 92861 (#0 24291 92861 4)	Wal-Mart Stores, Inc. Alameda County, Northern California	Navajo Manufacturing Company

**VII. EXHIBIT A**

<i>Product Category/Type</i>	<i>Such As*</i>	<i>Toxins</i>
Soft Eyewear Cases containing Di(2ethylhexyl)phthalate	Designer Eyewear Case, No. 92812 (#0 24291 92812 6)	Di(2-ethylhexyl)phthalate
Eyewear Cords with vinyl components containing Di(2ethylhexyl)phthalate	Sports Eyewear Cord, No. 92861 (#0 24291 92861 4)	Di(2-ethylhexyl)phthalate

\*The specifically identified examples of the types of products which 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 chemical 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 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 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, CA 94710.

On August 14, 2009, 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 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 each Violator and providing each envelope to a United States Postal Service Representative:

Larry Rupp, President  
Navajo Manufacturing Company  
5330 Fox Street  
Denver, CO 80216

Michael T. Duke, President  
Wal-Mart Stores, Inc.  
702 SW Eighth Street  
Bentonville, AR 72716

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, first class 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 August 14, 2009, at Berkeley, California.

  
Caroline Liang

# CERTIFICATE OF MERIT

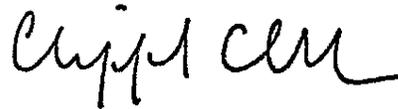
Health and Safety Code Section 25249.7(d)

I, Clifford A. Chanler, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged 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 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, 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: \_\_\_\_\_

8/14/09



\_\_\_\_\_  
Clifford A. Chanler

## SERVICE LIST

The Honorable Tom Orloff  
Alameda County District Attorney  
1225 Fallon Street, Room 900  
Oakland, CA 94612

The Honorable William Richmond  
Alpine County District Attorney  
270 Laramie Street, PO BOX 248  
Markleeville, CA 95210

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

The Honorable Michael Ramsey  
Butte County District Attorney  
205 County Center Drive  
Oroville, CA 95965

The Honorable Jeffrey Tuttle  
Calaveras County District Attorney  
891 Mountain Ranch Road  
San Andreas, CA 95249

The Honorable John R. Poyner  
Colusa County District Attorney  
547 Market Street, Suite 102  
Colusa, CA 95932

The Honorable Robert J. Kochly  
Contra Costa County District Attorney  
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Martinez, CA 94553

The Honorable Michael Riese  
Del Norte County District Attorney  
450 H Street, Room 171  
Crescent City, CA 95531

The Honorable Vernon Pierson  
El Dorado County District Attorney  
515 Main Street  
Placerville, CA 95667

The Honorable Elizabeth Egan  
Fresno County District Attorney  
2220 Tulare Street, #1000  
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The Honorable Robert Holzapfel  
Glenn County District Attorney  
P.O. Box 430  
Willows, CA 95988

The Honorable Paul Gallegos  
Humboldt County District Attorney  
825 5<sup>th</sup> Street  
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The Honorable Gilbert Otero  
Imperial County District Attorney  
940 West Main Street, Suite 102  
El Centro, CA 92243

The Honorable Arthur Maillet  
Inyo County District Attorney  
P.O. Drawer D  
Independence, CA 93526

The Honorable Edward R. Jagels  
Kern County District Attorney  
1215 Truxtun Avenue  
Bakersfield, CA 93301

The Honorable Ronald Calhoun  
Kings County District Attorney  
1400 West Lacey Boulevard  
Hanford, CA 93230

The Honorable Jon E. Hopkins  
Lake County District Attorney  
255 North Forbes Street  
Lakeport, CA 95453

The Honorable Robert Burns  
Lassen County District Attorney  
220 S. Lassen Street, Ste. 8  
Susanville, CA 96130

The Honorable Steve Cooley  
Los Angeles County District Attorney  
210 West Temple Street, Suite 18000  
Los Angeles, CA 90012

The Honorable Ernest LiCalsi  
Madera County District Attorney  
209 West Yosemite Avenue  
Madera, CA 93637

The Honorable Edward Berberian  
Marin County District Attorney  
3501 Civic Center Drive, Room 130  
San Rafael, CA 94903

The Honorable Robert Brown  
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5101 Jones Street, P.O. Box 730  
Mariposa, CA 95338

The Honorable Meredith J. Lintott  
Mendocino County District Attorney  
P.O. Box 1000  
Ukiah, CA 95482

The Honorable Larry Morse II  
Merced County District Attorney  
2222 M Street  
Merced, CA 95340

The Honorable Gary Woolverton  
Modoc County District Attorney  
204 S. Court Street, Room 202  
Alturas, CA 96101

The Honorable George Booth  
Mono County District Attorney  
P.O. Box 617  
Bridgeport, CA 93517

The Honorable Dean Flippo  
Monterey County District Attorney  
P.O. Box 1131  
Salinas, CA 93902

The Honorable Gary Lieberstein  
Napa County District Attorney  
931 Parkway Mall  
Napa, CA 94559

The Honorable Clifford Newell  
Nevada County District Attorney  
110 Union Street  
Nevada City, CA 95959

The Honorable Tony Rackauckas  
Orange County District Attorney  
401 Civic Center Drive West  
Santa Ana, CA 92701

The Honorable Bradford Fenocchio  
Placer County District Attorney  
10810 Justice Center Drive, Suite 240  
Roseville, CA 95678

The Honorable Jeff Cunan  
Plumas County District Attorney  
520 Main Street, Room 404  
Quincy, CA 95971

The Honorable Rodric Pacheco  
Riverside County District Attorney  
4075 Main Street  
Riverside, CA 92501

The Honorable Jan Scully  
Sacramento County District Attorney  
901 G Street  
Sacramento, CA 95814

The Honorable Candice Hooper  
San Benito County District Attorney  
419 4<sup>th</sup> Street, Second Floor  
Hollister, CA 95203

The Honorable Michael Ramos  
San Bernardino County District Attorney  
316 N. Mountain View Avenue  
San Bernardino, CA 92415

The Honorable Bonnie Dumanis  
San Diego County District Attorney  
330 W. Broadway Street  
San Diego, CA 92101

The Honorable Kamala Harris  
San Francisco County District Attorney  
850 Bryant Street, Room 322  
San Francisco, CA 94103

The Honorable James Willett  
San Joaquin County District Attorney  
P.O. Box 990  
Stockton, CA 95201

The Honorable Gerald Shea  
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San Luis Obispo, CA 93408

The Honorable James Fox  
San Mateo County District Attorney  
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Redwood City, CA 94063

The Honorable Christie Stanley  
Santa Barbara County District Attorney  
1112 Santa Barbara Street  
Santa Barbara, CA 93101

The Honorable Dolores Carr  
Santa Clara County District Attorney  
70 West Hedding Street, West Wing  
San Jose, CA 95110

The Honorable Bob Lee  
Santa Cruz County District Attorney  
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Santa Cruz, CA 95060

The Honorable Gerald Benito  
Shasta County District Attorney  
1525 Court Street, Third Floor  
Redding, CA 96001

The Honorable Lawrence Allen  
Sierra County District Attorney  
100 Courthouse Square, Second Floor  
Downieville, CA 95936

The Honorable James Andrus  
Siskiyou County District Attorney  
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Yreka, CA 96097

The Honorable David Paulson  
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The Honorable Stephan Passalacqua  
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The Honorable Birgit Fladager  
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Modesto, CA 95354

The Honorable Carl Adams  
Sutter County District Attorney  
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Tehama County District Attorney  
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Red Bluff, CA 96080

The Honorable Michael B. Harper  
Trinity County District Attorney  
PO Box 310  
Weaverville, CA 96093

The Honorable Phillip Cline  
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Visalia, CA 93201

The Honorable Donald Segerstrom, Jr  
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Sonora, CA 95370

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Ventura County District Attorney  
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Ventura, CA 93009

The Honorable Jeff Relsig  
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301 Second Street  
Woodland, CA 95695

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Yuba County District Attorney  
215 Fifth Street  
Marysville, CA 95901

The Honorable Rockard Delgadillo  
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1200 Third Avenue, Suite 1620  
San Diego, CA 92101

The Honorable Eileen M. Teichert  
Office of the City Attorney, Sacramento  
P.O. Box 1948  
Sacramento, CA 95812

The Honorable Dennis J. Herrera  
Office of the City Attorney, San Francisco  
City Hall, Room 234  
San Francisco, CA 94102

The Honorable Richard Doyle  
Office of the City Attorney, San Jose  
200 East Santa Clara Street  
San Jose, CA 95113

Office of the California Attorney General  
Proposition 65 Enforcement Reporting  
ATTN: Prop 65 Coordinator  
1515 Clay Street, Suite 2000  
Oakland, CA 94612-0550