

# SUPPLEMENTAL 60-DAY NOTICE OF VIOLATION

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

**DATE:** August 14, 2009

**TO:** Elizabeth McLaughlin, Chief Executive Officer – Hot Topic, 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 February 24, 2009. As noted above, notice is being provided to the violator, Hot Topic, Inc. (the "Violator"). 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 type of product that is causing consumer and occupational 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 below. All products within the type 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 14, 2008 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 Daniel Bornstein  
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 Violator's 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 Violator unless such Violator enters 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 Violator is 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 22 CAL. CODE REGS., §12903(b)(4).

Identified below is a specific example of a product recently purchased and witnessed as being available for purchase or use in California that is 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 example within the category or type of product 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 Violator.

<i>Product*</i>	<i>Retailer(s)</i>	<i>Manufacturer(s)/Distributor(s)</i>
Checker – Shoe, #979156-003	Hot Topic, Inc. Los Angeles County, Southern California	Me In Mind, LLC

**VII. EXHIBIT A**

<i>Product Category/Type</i>	<i>Such As*</i>	<i>Toxins</i>
Children’s Clothing containing Di(2-ethylhexyl)phthalate	Checker – Shoe, #979156-003	Di(2-ethylhexyl)phthalate

\*The specifically identified example of the type of product which is subject to this Notice is for the recipient’s benefit to assist in its investigation of, among other things, the magnitude of potential exposure to the listed chemical from other items within the product category/type listed in Exhibit A. It is important to note that this example is 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 Violator is 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 recipient’s 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 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 such Violator and providing the envelope to a United States Postal Service Representative:

Elizabeth McLaughlin, Chief Executive Officer  
Hot Topic, Inc.  
18305 East San Jose Avenue  
City of Industry, CA 91748

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

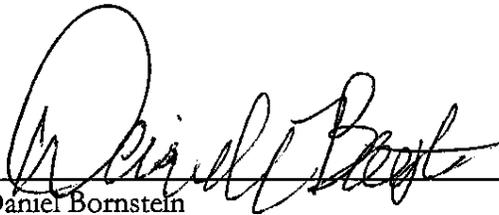
## CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Daniel Bornstein, 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 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 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, and (2) the facts, studies, or other data reviewed by those persons.)

Dated: 8/11/07

  
Daniel Bornstein

## 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 95120

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

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

The Honorable Jeffrey Tuttle  
Calaveras County District Attorney  
891 Mountain Ranch Road  
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The Honorable John R. Poyner  
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The Honorable Robert J. Kochly  
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Martinez, CA 94553

The Honorable Michael Riese  
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The Honorable Vernon Plerson  
El Dorado County District Attorney  
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The Honorable Elizabeth Egan  
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2220 Tulare Street, #1000  
Fresno, CA 93721

The Honorable Robert Holzapfel  
Glenn County District Attorney  
P.O. Box 430  
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The Honorable Paul Gallegos  
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The Honorable Gilbert Otero  
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940 West Main Street, Suite 102  
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The Honorable Arthur Maillet  
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The Honorable Edward R. Jagels  
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1215 Truxtun Avenue  
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The Honorable Ronald Calhoun  
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Lake County District Attorney  
255 North Forbes Street  
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The Honorable Robert Burns  
Lassen County District Attorney  
220 S. Lassen Street, Ste. 8  
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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

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3501 Civic Center Drive, Room 130  
San Rafael, CA 94903

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Mariposa, CA 95338

The Honorable Meredith J. Lintott  
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Ukiah, CA 95482

The Honorable Larry Morse II  
Merced County District Attorney  
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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  
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The Honorable Dean Flippo  
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Nevada City, CA 95959

The Honorable Tony Rackauckas  
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The Honorable Bradford Fenocchio  
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10810 Justice Center Drive, Suite 240  
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The Honorable Jeff Cunan  
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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  
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316 N. Mountain View Avenue  
San Bernardino, CA 92415

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San Diego, CA 92101

The Honorable Kamala Harris  
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The Honorable James Willett  
San Joaquin County District Attorney  
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Stockton, CA 95201

The Honorable Gerald Shea  
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The Honorable James Fox  
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Redwood City, CA 94063

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Santa Barbara, CA 93101

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Santa Clara County District Attorney  
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San Jose, CA 95110

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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