# SUPPLEMENTAL 60-DAY NOTICE OF VIOLATION

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

**DATE:** September 16, 2010

**TO:** General Counsel – Fossil, 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 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 15, 2009. As noted above, notice is also being provided to the violator, Fossil, 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 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, Inhalation |
| 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 in California dating as far back as September 16, 2007 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 exposure 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 thereby allowing the listed chemical to leach out of the substrate. These activities cause infants and children to be exposed directly through the migration of the listed chemical from the products. In addition, exposures occur as a result of inhalation of indoor air containing airborne particles, ingestion of household dust through hand-to-mouth contact and/or direct dermal contact with the products (which may continue to occur for a significant period after dermal contact with the products stops). People likely to be exposed by the means described above are women of childbearing age, 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 Josh Voorhees
The Chanler Group
Parker Plaza
2560 Ninth Street, Suite 214
Berkeley, CA 94710
Telephone: (510) 848-8880
Email: josh@chanler.com

## 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) 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 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 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.

## VI. ADDITIONAL NOTICE INFORMATION

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

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 one of the categories or types of offending products covered by this Notice. Based on publicly available information, the retailers, distributors and/or manufacturers of the example 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 and other distributors and retailers of the manufacturer.

| *Product** | *Retailer(s)* | *Manufacturer(s)/Distributor(s)* |
|---|---|---|
| Relic Savannah Checkbook Wallet, RLS5706700 (#7 23765 09721 3) | Kohl's Corporation<br>Contra Costa County, Northern California | Fossil, Inc. |

## VII. EXHIBIT A

| *Product Category/Type* | *Such As** | *Toxins* |
|---|---|---|
| Wallets and other coin or bill holders containing Di(2-ethylhexyl)phthalate | Relic Savannah Checkbook Wallet, RLS5706700 (#7 23765 09721 3) | Di(2-ethylhexyl)phthalate |
| Handbags, purses, clutches and totes containing Di(2-ethylhexyl)phthalate | | Di(2-ethylhexyl)phthalate |
| Belts containing Di(2-ethylhexyl)phthalate | | Di(2-ethylhexyl)phthalate |
| Footwear containing Di(2-ethylhexyl)phthalate | | Di(2-ethylhexyl)phthalate |
| Apparel, including gloves and headwear (and excluding sauna suits) containing Di(2-ethylhexyl)phthalate | | Di(2-ethylhexyl)phthalate |
| Jewelry containing Di(2-ethylhexyl)phthalate | | Di(2-ethylhexyl)phthalate |

## VII. EXHIBIT A (continued)

| *Product Category/Type* | *Such As** | *Toxins* |
|---|---|---|
| Key holders, keychains, and key caps containing Di(2-ethylhexyl)phthalate | | Di(2-ethylhexyl)phthalate |
| Luggage tags and ID cases containing Di(2-ethylhexyl)phthalate | | Di(2-ethylhexyl)phthalate |
| Bag charms and zipper pulls containing Di(2-ethylhexyl)phthalate | | Di(2-ethylhexyl)phthalate |
| Eyeglass cases containing Di(2-ethylhexyl)phthalate | | Di(2-ethylhexyl)phthalate |
| Coverings/cases for mobile electronic devices (e.g., for telephones, cameras, MP3 players, CDs/DVDs, and laptops) containing Di(2-ethylhexyl)phthalate | | Di(2-ethylhexyl)phthalate |
| Coverings for journal/address books containing Di(2-ethylhexyl)phthalate | | Di(2-ethylhexyl)phthalate |
| Cosmetic cases/bags containing Di(2-ethylhexyl)phthalate | | Di(2-ethylhexyl)phthalate |
| Toiletry cases/bags containing Di(2-ethylhexyl)phthalate | | Di(2-ethylhexyl)phthalate |

*The specifically identified example of one of the types of products that 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 categories/types 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 types 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 types or categories 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 September 16, 2010, 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 such envelope to a United States Postal Service Representative:

General Counsel
Fossil, Inc.
2280 North Greenville Avenue
Richardson, TX 75082

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:

Robert Falk
Morrison & Foerster LLP
425 Market Street, 32nd Floor
San Francisco, CA 94105

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:

| | |
|---|---|
| *Via 2nd Day Air Service by placing such envelope in a Federal Express Drop-Off Box:* | The Attorney General of the State of California; |
| *By placing each envelope in a United States Postal Service mailbox, first class postage prepaid:* | 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 September 16, 2010, at Berkeley, California.

Eleanor Chen-Ranstrom

# CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Josh Voorhees, 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: 9/16/10

Josh Voorhees