

# SUPPLEMENTAL 60-DAY NOTICE OF VIOLATION

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

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**DATE:** October 29, 2010

**TO:** Robert Brocoff, President – Kraco Enterprises, LLC  
Mike 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:** John Moore

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## I. INTRODUCTION

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My name is John Moore. 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 June 17, 2010. As noted above, notice is also being provided to the violators, Kraco Enterprises, LLC and Wal-Mart Stores Inc. (the "Violators"). 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

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## II. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

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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 October 29, 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 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 thereby allowing the listed chemical to leach out of the substrate. These activities cause infants and children to be exposed directly through 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

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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:

John Moore  
c/o Clifford A. Chanler  
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 "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 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

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>
Utility All Purpose Mat, U-810 (#0 33299 25071 9)	Amazon.com, Inc. ( <a href="http://www.amazon.com">http://www.amazon.com</a> )	Kraco Enterprises, LLC
Auto Expressions Seat Cover, Part #80001457 (#0 19912 00040 4)	Wal-Mart Stores Inc. Sacramento County, Northern California	Auto Expressions, LLC; Kraco Enterprises, LLC; SOPUS Products

## VII. EXHIBIT A

<i>Product Category/Type</i>	<i>Such As*</i>	<i>Toxins</i>
Vinyl Mats containing Di(2-ethylhexyl)phthalate	Utility All Purpose Mat, U-810 (#0 33299 25071 9)	Di(2-ethylhexyl)phthalate
Automotive Seat Covers containing Di(2-ethylhexyl)phthalate	Auto Expressions Seat Cover, Part #80001457 (#0 19912 00040 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 were and 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 October 29, 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 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:

Robert Brocoff, President  
Kraco Enterprises, LLC  
505 East Euclid Avenue  
Compton, CA 90222

Mike Duke, President  
Wal-Mart Stores Inc.  
702 SW Eighth Street  
Bentonville, AR 72712

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 October 29, 2010, at Berkeley, California.



Eleanor Chen-Ranstrom

# 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: 10/29/10

  
Clifford A. Chanler

## SERVICE LIST

The Honorable Nancy O'Malley  
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 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  
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The Honorable Jeffrey Tuttle  
Calaveras County District Attorney  
891 Mountain Ranch Road  
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The Honorable John R. Poyner  
Colusa County District Attorney  
547 Market Street, Suite 102  
Colusa, CA 95932

The Honorable Robert J. Kochly  
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900 Ward Street  
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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  
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The Honorable Elizabeth Egan  
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2220 Tulare Street, #1000  
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The Honorable Robert Holzapfel  
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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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Independence, CA 93526

The Honorable Edward R. Jagels  
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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  
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The Honorable Michael Keitz  
Madera County District Attorney  
209 West Yosemite Avenue  
Madera, CA 93637

The Honorable Edward Berberian  
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3501 Civic Center Drive, Room 130  
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5101 Jones Street, P.O. Box 730  
Mariposa, CA 95338

The Honorable Meredith J. Lintott  
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The Honorable Dean Filippo  
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The Honorable Gary Lieberstein  
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The Honorable Clifford Newell  
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Nevada City, CA 95959

The Honorable Tony Rackauckas  
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401 Civic Center Drive West  
Santa Ana, CA 92701

The Honorable Bradford Fenocchio  
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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  
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4075 Main Street  
Riverside, CA 92501

The Honorable Jan Scully  
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901 G Street  
Sacramento, CA 95814

The Honorable Candice Hooper-Mancino  
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419 4<sup>th</sup> Street, Second Floor  
Hollister, CA 95203

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San Bernardino, CA 92415

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San Diego County District Attorney  
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San Diego, CA 92101

The Honorable Kamala Harris  
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San Francisco, CA 94103

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The Honorable James Kirk Andrus  
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The Honorable Dennis J. Herrera  
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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