

# SUPPLEMENTAL 60-DAY NOTICE OF VIOLATION

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

**DATE:** July 12, 2011

**TO:** Anna M. Lian, Vice President and General Counsel – ACI International  
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 February 24, 2011. As noted above, notice is also being provided to the violator, ACI International (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 chemicals ("listed chemicals") identified below, as follows:

Product Exposure: See Section VI. Exhibit A  
Listed Chemicals: Di(2-ethylhexyl)phthalate ("DEHP"); Butyl benzyl phthalate ("BBP");  
Di-n-butyl phthalate ("DBP")  
Routes of Exposure: Ingestion, Dermal, Inhalation  
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 VI 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 July 12, 2008 are subject to this Notice. As a result of the sales of these products, exposures to the listed chemicals 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 chemicals, 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 chemicals 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 chemicals. Infants, children and/or women of childbearing age ingest the listed chemicals when they, among other activities, place the product, or a portion thereof, into their mouth, or otherwise suck, lick, teethe and/or bite the product thereby allowing the listed chemicals to leach out of the substrate directly into their mouths. Infants, children and/or women of childbearing age ingest the listed chemicals when they, among other activities, touch the products and transfer the listed chemicals from the products to their mouths through hand-to-mouth activities that may continue to occur for a significant period after contact with the products stops. Infants, children and/or women of childbearing age are exposed to the listed chemicals through direct dermal contact when they, among other activities, handle, touch or otherwise use the products. Infants, children and/or women of childbearing age inhale the listed chemicals when, among other activities, they breathe indoor air with airborne particles that are released from the products containing the listed chemicals.

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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:

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

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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 Violator's reference, I have attached a copy of "Proposition 65: A Summary" which has been prepared by OEHHA.

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### **V. ADDITIONAL NOTICE INFORMATION**

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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 and other distributors and retailers of the manufacturer.

**V. ADDITIONAL NOTICE INFORMATION (continued)**

| <i>Product*</i>  | <i>Retailer(s)</i>  | <i>Manufacturer(s)/Distributor(s)</i> |
|--|---|---------------------------------------|
| OP Ventura, Style<br>OPW5689A-1, SKU<br>03762119<br>(#0 12926 94572 3) | Big 5 Sporting Goods Corporation<br>Alameda County, Northern California | ACI International                     |

**VI. EXHIBIT A**

| <i>Product Category/Type</i>   | <i>Such As*</i>  | <i>Toxins</i>   |
|--|--|---|
| Footwear containing<br>Di(2-ethylhexyl)phthalate or<br>Butyl benzyl phthalate or<br>Di-n-butyl phthalate or any<br>combination thereof | OP Ventura, Style OPW5689A-1,<br>SKU 03762119 (#0 12926 94572 3) | Di(2-ethylhexyl)phthalate<br>Butyl benzyl phthalate<br>Di-n-butyl phthalate |

\*The specifically identified example of the type of product 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 chemicals 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 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 Parker Plaza, 2560 Ninth Street, Suite 214, Berkeley, CA 94710.

On July 12, 2011, 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:

Anna M. Lian, Vice President and General Counsel  
ACI International  
844 Moraga Drive  
Los Angeles, CA 90049

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:

Sean McMillan, Esq.  
Greenberg Traurig  
2450 Colorado Ave., Ste 400E  
Santa Monica, CA 90404

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, postage prepaid:</i>           | 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 July 12, 2011 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 that 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 chemicals 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: July 12, 2011



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Clifford A. Chanler

## SERVICE LIST

The Honorable Nancy O'Malley  
Alameda County District Attorney  
1225 Fallon Street, Room 900  
Oakland, CA 94612

The Honorable Terese Drabec  
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 Barbara Yook  
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The Honorable John R. Poyner  
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The Honorable Mark Peterson  
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725 Court Street, Fourth Floor  
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The Honorable Jon Alexander  
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The Honorable Vernon Pierson  
El Dorado County District Attorney  
515 Main Street  
Placerville, CA 95667

The Honorable Elizabeth Egan  
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The Honorable Robert Maloney  
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P.O. Box 430  
Willows, CA 95988

The Honorable Paul Gallegos  
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825 5<sup>th</sup> Street  
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The Honorable Gilbert Otero  
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The Honorable Arthur Maillet  
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Independence, CA 93526

The Honorable Lisa Green  
Kern County District Attorney  
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The Honorable Greg Strickland  
Kings County District Attorney  
1400 West Lacey Boulevard  
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The Honorable Donald Anderson  
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  
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210 West Temple Street, Suite 18000  
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209 West Yosemite Avenue  
Madera, CA 93637

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San Rafael, CA 94903

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Mariposa, CA 95338

The Honorable C. David Eyster  
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Ukiah, CA 95482

The Honorable Larry Morse II  
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Merced, CA 95340

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Alturas, CA 96101

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The Honorable David Hollister  
Plumas County District Attorney  
520 Main Street, Room 404  
Quincy, CA 95971

The Honorable Paul Zellerbach  
Riverside County District Attorney  
3660 Orange Street  
Riverside, CA 92501

The Honorable Jan Scully  
Sacramento County District Attorney  
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Sacramento, CA 95814

The Honorable Candice Hooper-Mancino  
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San Bernardino, CA 92415

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San Luis Obispo, CA 93408

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The Honorable Lawrence Allen  
Sierra County District Attorney  
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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