# SUPPLEMENTAL 60-DAY NOTICE OF VIOLATION

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

**DATE:** November 17, 2011

**TO:** Gregory Wasson, President – Walgreen Co.
Kenneth Ross, President – Atico International USA, 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

## I. INTRODUCTION

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 March 31, 2011. As noted above, notice is also being provided to the alleged violators, Walgreen Co. and Atico International USA, 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 chemicals ("listed chemicals") identified below, as follows:

| | |
|---|---|
| Product Exposure: | See Section VI. Exhibit A |
| Listed Chemicals: | Di(2-ethylhexyl)phthalate ("DEHP"); 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 November 17, 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 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 chemicals. 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. 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. 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.

## III. CONTACT INFORMATION

Please direct all questions concerning this notice to me through my counsel's office at the following address:

John Moore
c/o Josh Voorhees
The Chanler Group
Parker Plaza
2560 Ninth Street, 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) 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 and DBP 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. EXHIBIT A

| *Product Category/Type* | *Toxins* |
|---|---|
| Footwear (Sandals, Flip Flops, Slippers) containing Di(2-ethylhexyl)phthalate and/or Di-n-butyl phthalate or any combination thereof | Di(2-ethylhexyl)phthalate<br>Di-n-butyl phthalate |

# 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 November 17, 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 alleged 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 the entities below and providing each envelope to a United States Postal Service Representative:

Gregory Wasson, President
Walgreen Co.
200 Wilmot Road
Deerfield, IL 60015

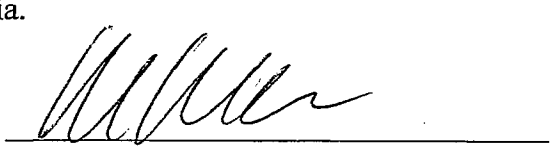
Kenneth Ross, President
Atico International USA, Inc.
501 South Andrews Avenue
Fort Lauderdale, FL 33301

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, 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 November 17, 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 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 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 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: November 17, 2011

Clifford A. Chanler