

# SECOND SUPPLEMENTAL 60-DAY NOTICE OF VIOLATION

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

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DATE: December 20, 2012

TO: Roman Ferber, President – FKA Distributing Co.  
Roman Ferber, President – Homedics-U.S.A., Inc.  
Arthur Stark, President – Bed Bath & Beyond Inc.  
Hubert Joly, Chief Executive Officer – Best Buy Co., Inc.  
Michael Duke, President – Wal-Mart Stores, Inc.  
Jeffrey Bezos, President – Amazon.com, 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 Notices of Violation sent on September 19, 2011 and November 2, 2012. As noted above, notice is also being provided to the alleged violators, FKA Distributing Co., Homedics-U.S.A., Inc., Bed Bath & Beyond Inc., Best Buy Co., Inc., Wal-Mart Stores, Inc. and Amazon.com, 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 VII. Exhibit A  
Listed Chemicals: Di(2-ethylhexyl)phthalate ("DEHP"); Di-n-butyl phthalate ("DBP")  
Routes of Exposure: Ingestion, Dermal  
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 December 20, 2009 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. 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.

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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 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 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 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. 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 product covered by this Notice. Based on publicly available information, the retailers, distributors and/or manufacturers of the examples within the categories or types 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 Violators and other distributors and retailers of the manufacturer.

<i>Product*</i>	<i>Retailer(s)</i>	<i>Manufacturer(s)/Distributor(s)</i>
HMDX Audio Speaker-On-The-Go	Kohl's Corporation Sacramento County, Northern California	FKA Distributing Co.; Homedics-U.S.A., Inc.
HDMX Go Portable Speaker Case, Model # HX-GO3PRPLDA (#0 31262 04976 6)	Bed Bath & Beyond Inc. Monterey County, Northern California	FKA Distributing Co.; Homedics-U.S.A., Inc.
HDMX Go Portable Speaker Case, Model # HX-GO3PRA (#0 31262 04972 8)	Best Buy Co., Inc. Alameda County, Northern California	FKA Distributing Co.; Homedics-U.S.A., Inc.
HDMX Go Portable Speaker Case, Model # HX-GO3SVA (#0 31262 04971 1)	Wal-Mart Stores, Inc. Alameda County, Northern California	FKA Distributing Co.; Homedics-U.S.A., Inc.
Homedics The Crash Pad Instant Folding Bed, HMS-3MAT (#0 31262 04521 8)	Amazon.com, Inc. ( <a href="http://www.amazon.com">http://www.amazon.com</a> )	FKA Distributing Co.; Homedics-U.S.A., Inc.

**VII. EXHIBIT A**

<i>Product Category/Type</i>	<i>Such As*</i>	<i>Toxins</i>
Portable Speaker Cases with Zipper Pulls containing Di(2-thylhexyl)phthalate	HMDX Audio Speaker-On-The-Go	Di(2-ethylhexyl)phthalate

**VII. EXHIBIT A (continued)**

<i>Product Category/Type</i>	<i>Such As*</i>	<i>Toxins</i>
Portable Speaker Cases with Zipper Pulls containing Di-n-butyl phthalate	HMDX Audio Speaker-On-The-Go	Di-n-butyl phthalate
Portable Speaker Cases with Cords containing Di(2-thylhexyl)phthalate	HMDX Audio Speaker-On-The-Go	Di(2-ethylhexyl)phthalate
Portable Speaker Cases with Cords containing Di(2-thylhexyl)phthalate	HDMX Go Portable Speaker Case, Model # HX-GO3PRPLDA (#0 31262 04976 6)	Di(2-ethylhexyl)phthalate
Portable Speaker Cases with Cords containing Di(2-thylhexyl)phthalate	HDMX Go Portable Speaker Case, Model # HX-GO3PRA (#0 31262 04972 8)	Di(2-ethylhexyl)phthalate
Portable Speaker Cases with Cords and Zipper Pulls containing Di(2-thylhexyl)phthalate	HDMX Go Portable Speaker Case, Model # HX-GO3SVA (#0 31262 04971 1)	Di(2-ethylhexyl)phthalate
Folding Beds/Mats containing Di(2-thylhexyl)phthalate	Homedics The Crash Pad Instant Folding Bed, HMS-3MAT (#0 31262 04521 8)	Di(2-ethylhexyl)phthalate

\*The specifically identified examples of the types of products that 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 chemicals 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 Parker Plaza, 2560 Ninth Street, Suite 214, Berkeley, CA 94710.

On December 20, 2012, I served the following documents:

**SECOND 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 listed below and providing each envelope to a United States Postal Service Representative:

Roman Ferber, President  
FKA Distributing Co.  
3000 North Pontiac Trail  
Commerce Township, MI 48390

Roman Ferber, President  
Homedics-U.S.A., Inc.  
3000 North Pontiac Trail  
Commerce Township, MI 48390

Arthur Stark, President  
Bed Bath & Beyond Inc.  
650 Liberty Avenue  
Union, NJ 07083

Hubert Joly, Chief Executive Officer  
Best Buy Co., Inc.  
7601 Penn Avenue South  
Richfield, MN 55423

Michael Duke, President  
Wal-Mart Stores, Inc.  
702 SW 8<sup>th</sup> Street  
Bentonville, AR 72716

Jeffrey Bezos, President  
Amazon.com, Inc.  
410 Terry Avenue North  
Seattle, WA 98109

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  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 December 20, 2012, 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: December 20, 2012

  
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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  
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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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The Honorable Jon Alexander  
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The Honorable Vernon Pierson  
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The Honorable Elizabeth Egan  
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The Honorable Robert Maloney  
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Willows, CA 95988

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 Donald Anderson  
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255 North Forbes Street  
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The Honorable Robert Burns  
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The Honorable Gary Lieberstein  
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The Honorable Clifford Newell  
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The Honorable Tony Rackaukas  
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The Honorable Ronald Owens  
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Roseville, CA 95678

The Honorable David Hollister  
Plumas County District Attorney  
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The Honorable Paul Zellerbach  
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Riverside, CA 92501

The Honorable Jan Scully  
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Sacramento, CA 95814

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San Francisco, CA 94103

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San Luis Obispo, CA 93408

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Santa Barbara County District Attorney  
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Redwood City, CA 94063

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Santa Barbara, CA 93101

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70 West Hedding Street, West Wing  
San Jose, CA 95110

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701 Ocean Street, Room 200  
Santa Cruz, CA 95060

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Shasta County District Attorney  
1355 West Street  
Redding, CA 96001

The Honorable Lawrence Allen  
Sierra County District Attorney  
100 Courthouse Square, Second Floor  
Downieville, CA 95936

The Honorable James Kirk Andrus  
Siskiyou County District Attorney  
P.O. Box 986  
Yreka, CA 96097

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Solano County District Attorney  
675 Texas Street, Suite 4500  
Fairfield, CA 94533

The Honorable Jill Ravitch  
Sonoma County District Attorney  
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Santa Rosa, CA 95403

The Honorable Birgit Fladager  
Stanislaus County District Attorney  
832 12<sup>th</sup> Street, Suite 300  
Modesto, CA 95354

The Honorable Carl Adams  
Sutter County District Attorney  
446 Second Street  
Yuba City, CA 95991

The Honorable Gregg Cohen  
Tehama County District Attorney  
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Red Bluff, CA 96080

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Trinity County District Attorney  
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Weaverville, CA 96093

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Tulare County District Attorney  
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Visalia, CA 93291

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Sonora, CA 95370

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800 South Victoria Avenue  
Ventura, CA 93009

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Woodland, CA 95695

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Marysville, CA 95901

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1200 Third Avenue, Suite 1620  
San Diego, CA 92101

The Honorable Eileen M. Teichert  
Office of the City Attorney, Sacramento  
P.O. Box 1948  
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