

# 60-DAY NOTICE OF VIOLATION

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

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DATE: October 24, 2014

TO: Ian Ashken, President – Jarden Corporation  
Mark Martin, President – Marmot Mountain, LLC  
Joseph Schmidt, President – Dick’s Sporting Goods, 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: Laurence Vinocur

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## I. INTRODUCTION

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My name is Laurence Vinocur. 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”). As noted above, notice is also being provided to the alleged violators, Jarden Corporation, Marmot Mountain, LLC and Dick’s Sporting Goods, Inc. (the “Violators”). The violations covered by this Notice consist of the product exposures, routes of exposure, and type 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: Tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”)  
Routes of Exposure: Ingestion, Dermal, Inhalation  
Type of Harm: Cancer

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

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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 VII below. All products within the category covered by this Notice shall be referred to hereinafter as the “products.” Exposures to the listed chemical from the use of the products have been occurring without the clear and reasonable warning required by Proposition 65, dating as far back as October 28, 2012. 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 listed chemical from the reasonably foreseeable use of the products.

California citizens, including infants and children, through the act of buying, acquiring or utilizing the products, are exposed to the listed chemical. California citizens, including infants and children, ingest the listed chemical when they, among other activities, touch the products, and transfer the listed chemical 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. California citizens, including infants and children, are exposed to the listed chemical through direct dermal contact when they, among other activities, handle, touch or otherwise use the products. California citizens, including infants and children, inhale the listed chemical when, among other activities, they breathe indoor air with airborne particles that are released from the products containing the listed chemical.

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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:

Laurence Vinocur  
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 TDCPP 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.

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**VI. 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 Violators and other retailers and distributors of the manufacturer.

<i>Product*</i>	<i>Retailer(s)</i>	<i>Manufacturer(s)/Distributor(s)</i>
Marmot Aspen 2P Tent, #93600, UPC #7 85562 40560 9	Dick’s Sporting Goods, Inc. Los Angeles County, Southern California	Jarden Corporation; Marmot Mountain, LLC

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**VII. EXHIBIT A**

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<i>Product Category/Type</i>	<i>Such As*</i>	<i>Toxins</i>
Tent/Shelter Fabrics	Marmot Aspen 2P Tent, #93600, UPC #7 85562 40560 9	Tris(1,3-dichloro-2-propyl) phosphate

\*The specifically identified example of the type of product that is subject to this Notice is for the recipients’ benefit to assist in their investigation of, among other things, the magnitude of potential exposures to the listed chemical 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 Violators are 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 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 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 October 24, 2014, I served the following documents:

**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 entities 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:

Ian Ashken, President  
Jarden Corporation  
1800 North Military Trail  
Boca Raton, FL 33431

Mark Martin, President  
Marmot Mountain, LLC  
5789 State Farm Drive, Suite 100  
Rohnert Park, CA 94928

Joseph Schmidt, President  
Dick's Sporting Goods, Inc.  
345 Court Street  
Coraopolis, PA 15108

as well as by providing copies of the above documents electronically uploaded to the public enforcers according to directions from their respective offices, and/or by placing a true and correct copy in a sealed envelope, addressed to each party listed below, and served as follows:

<i>Electronically Uploaded to the Attorney General's website:</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 October 24, 2014, at Berkeley, California.



Caroline Pak

# 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 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: October 24, 2014



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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  
Orville, CA 95965

The Honorable Barbara Yook  
Calaveras County District Attorney  
891 Mountain Ranch Road  
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The Honorable John R. Poyner  
Colusa County District Attorney  
346 Fifth Street  
Colusa, CA 95932

The Honorable Mark Peterson  
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The Honorable Jon Alexander  
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981 H Street  
Crescent City, CA 95531

The Honorable Vernon Pierson  
El Dorado County District Attorney  
515 Main Street  
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The Honorable Elizabeth Egan  
Fresno County District Attorney  
2220 Tulare Street, #1000  
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The Honorable Robert Maloney  
Glenn County District Attorney  
P.O. Box 430  
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  
El Centro, CA 92243

The Honorable Arthur Maillet  
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The Honorable Lisa Green  
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The Honorable Greg Strickland  
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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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The Honorable Michael Keitz  
Madera County District Attorney  
209 West Yosemite Avenue  
Madera, CA 93637

The Honorable Edward Berberian  
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The Honorable C. David Eyster  
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Ukiah, CA 95482

The Honorable Larry Morse II  
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The Honorable Gary Woolverton  
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Alturas, CA 96101

The Honorable George Booth  
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The Honorable Clifford Newell  
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The Honorable Tony Rackauckas  
Orange County District Attorney  
401 Civic Center Drive West  
Santa Ana, CA 92701

The Honorable Ronald Owens  
Placer County District Attorney  
10810 Justice Center Drive, Suite 240  
Roseville, CA 95678

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

The Honorable Paul Zellerbach  
Riverside County District Attorney  
3960 Orange Street  
Riverside, CA 92501

The Honorable Jan Scully  
Sacramento County District Attorney  
901 G Street  
Sacramento, CA 95814

The Honorable Candice Hooper  
San Benito County District Attorney  
419 4<sup>th</sup> Street, Second Floor  
Hollister, CA 95203

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316 N. Mountain View Avenue  
San Bernardino, CA 92415

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San Diego, CA 92101

The Honorable George Gascon  
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San Francisco, CA 94103

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San Luis Obispo, CA 93408

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San Jose, CA 95110

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The Honorable Lawrence Allen  
Sierra County District Attorney  
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Office of the City Attorney, San Francisco  
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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