

# SCHWARTZ LAW, P.C.

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June 28, 2016

## NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 *ET SEQ.* (PROPOSITION 65)

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

Schwartz Law represents the Center for Advanced Public Awareness, Inc. (“CAPA”), 180 Promenade Circle, Suite 300, Sacramento, CA 95834; CAPA is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, fostering and increasing the public awareness of chemicals used to manufacture consumer products, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

CAPA has identified violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at California Health & Safety Code § 25249.5 et seq., with respect to the product(s) identified below. These violations have occurred and continue to occur because the Alleged Violator identified below failed to provide required clear and reasonable warnings with these products. Section 25249.6 of the statute provides that “[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual ...” Without proper warnings regarding the toxic effects of exposures to this listed chemical that results from contact with this product, California citizens lack the information necessary to make an informed decision on whether and/or how to eliminate (or reduce) their risk of exposure to the listed chemical from the reasonably foreseeable use of the product.

This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Health and Safety Code § 25249.7(d), CAPA intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**Certificate of Merit and General Information about Proposition 65.** Pursuant to Title 11 C.C.R. § 3100, a certificate of merit is attached hereto. Pursuant to Title 27, C.C.R. § 25903(b), a copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with this letter served to the alleged Violator identified below.

**Alleged Violator.** The name of the company covered by this notice that violated Proposition 65 (hereinafter the “Violator”) is:

**Office Depot, Inc.**

**Consumer Products and Listed Chemical.** The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

**Gold Struck Gold ID Badge Holder - Di(2-ethylhexyl) phthalate (“DEHP”)  
UPC: 7 35854 99361 0**

On January 1, 1988, the State of California listed DEHP as a chemical known to the State to cause cancer. On October 24, 2003, the State of California listed Di(2-ethylhexyl) phthalate (DEHP) as a chemical known to cause developmental male reproductive toxicity. Both additions took place more than twenty (20) months before CAPA served this Notice.

**Violations.** The alleged Violators knowingly and intentionally have exposed and continue to knowingly and intentionally expose consumers within the State of California to Di(2-ethylhexyl) phthalate (DEHP) at levels that, upon reasonable use of the product, exceed the No Significant Risk Level and the Maximum Allowable Dose Level without providing clear and reasonable warning of this exposure. In particular, the product does not warn that it

contains chemicals known to the State of California to cause both cancer and reproductive toxicity, developmental, male.

**Route of Exposure.** The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of the product. Consequently, a primary route of exposure to these chemicals is through dermal exposure. Consumers and other individuals, including women of childbearing age, are exposed to the listed chemical through direct dermal contact when they, among other activities, handle, touch or otherwise use the products. The potential exists for dermal exposure of DEHP through direct contact with the user's bare hands or other body parts when the tote bag is manipulated or contacted. Moreover, with children, mouthing of the product is a distinct possibility; and certainly some amount of exposure through ingestion can occur by touching the product with subsequent touching of the user's hand to mouth. By way of example, consumers and other individuals, including women of childbearing age, 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. If the tote bag is stored in a closed drawer with other materials DEHP that leaches from tote bag may contaminate other articles that may be ingested. More likely, the product may be used to carry items and materials that commonly come into contact with the mouth.

Examples include, but are not limited to, use of DEHP contaminated baby bottles and other beverage containers, and infant toys, that are placed in the mouth, and DEHP contaminated food products that are ingested, or DEHP contaminated napkins that are used to clean the user's mouth.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since a currently-unknown date but no later than August 3, 2015, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to this chemical.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, CAPA is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator 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) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 for products sold in the future or reformulate such products to eliminate further DEHP exposures. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time consuming litigation.

CAPA has retained Schwartz Law as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention at the address and telephone number indicated herein.**

Sincerely,

SCHWARTZ LAW, P.C.

  
Jeffrey M. Schwartz

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Office Depot, Inc.)

Additional Supporting Information for Certificate of Merit (to AG only)

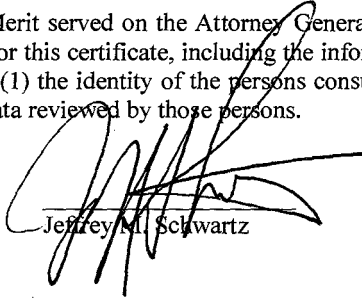
**CERTIFICATE OF MERIT**

**Re: CAPA's Notice of Proposition 65 Violations by Office Depot, Inc.**

I, Jeffrey M. Schwartz, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the party identified in the notice violated California Health & Safety Code § 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.
4. Based on the information obtained through those consultants, and on 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 that 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. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & 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: June 28, 2016



Jeffrey M. Schwartz

## CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to this entitled action. My business address is 647 Camino de los Mares, Suite 225, San Clemente, CA 92673. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at San Clemente, California.

On June 28, 2016, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE § 25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Roland C. Smith, CEO  
Office Depot, Inc.  
6600 North Military Trail  
Boca Raton, FL 33496

Agent for Service of Process:  
Corporate Creations Network Inc.  
1430 Truxtun Ave 5th Fl.  
Bakersfield CA 93301

On June 28, 2016, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE § 25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE § 25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice>:

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Oakland, CA 94612-0550

On June 28, 2016, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE § 25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to the party listed below:

Stacey Grassini, Deputy District Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
[sgrassini@contracostada.org](mailto:sgrassini@contracostada.org)

Gary Lieberstein, District Attorney  
Napa County  
931 Parkway Mall  
Napa, CA 94559  
[CEPD@countyofnapa.org](mailto:CEPD@countyofnapa.org)

Michelle Latimer, Program Coordinator  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
[mlatimer@co.lassen.ca.us](mailto:mlatimer@co.lassen.ca.us)

Paul E. Zellerbach, District Attorney  
Riverside County  
3960 Orange Street  
Riverside, CA 92501  
[Prop65@rivcoda.org](mailto:Prop65@rivcoda.org)

Dije Ndreu, Deputy District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
[Prop65DA@co.monterey.ca.us](mailto:Prop65DA@co.monterey.ca.us)

Anne Marie Schubert, District Attorney  
Sacramento County  
901 G Street  
Sacramento, CA 95814  
[Prop65@sacda.org](mailto:Prop65@sacda.org)

Gregory Alker, Assistant District Attorney  
San Francisco County  
732 Brannan Street  
San Francisco, CA 94103  
[gregory.alker@sfgov.org](mailto:gregory.alker@sfgov.org)

Phillip J. Cline, District Attorney  
Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
[Prop65@co.tulare.ca.us](mailto:Prop65@co.tulare.ca.us)

Yen Dang, Supervising Deputy District Attorney  
Santa Clara County  
70 W Hedding St  
San Jose, CA 95110  
EPU@da.sccgov.org

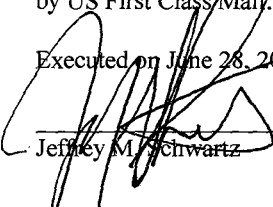
Stephan R. Passalacqua, District Attorney  
Sonoma County  
600 Administration Dr  
Sonoma, CA 95403  
jbarnes@sonoma-county.org

Gregory D. Totten, District Attorney  
Ventura County  
800 S Victoria Ave  
Ventura, CA 93009  
daspecialops@ventura.org

Jeff W. Reisig, District Attorney  
Yolo County  
301 Second Street  
Woodland, CA 95695  
cfepd@yolocounty.org

On June 28, 2016, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE § 25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by US First Class Mail.

Executed on June 28, 2016, in San Clemente, California.

  
Jeffrey M. Schwartz

District Attorney, Alameda County  
1225 Fallon Street, Suite 900  
Oakland, CA 94612

District Attorney, Alpine County  
P.O. Box 248  
Markleeville, CA 96120

District Attorney, Amador County  
708 Court Street  
Jackson, CA 95642

District Attorney, Butte County  
25 County Center Drive, Suite 245  
Oroville, CA 95965

District Attorney, Calaveras County  
891 Mountain Ranch Road  
San Andreas, CA 95249

District Attorney, Colusa County  
346 Fifth Street Suite 101  
Colusa, CA 95932

District Attorney, Del Norte County  
450 H Street, Room 171  
Crescent City, CA 95531

District Attorney, El Dorado County  
515 Main Street  
Placerville, CA 95667

District Attorney, Fresno County  
2220 Tulare Street, Suite 1000  
Fresno, CA 93721

District Attorney, Glenn County  
Post Office Box 430  
Willows, CA 95988

District Attorney, Madera County  
209 West Yosemite Avenue  
Madera, CA 93637

District Attorney, Marin County  
3501 Civic Center Drive, Room 130  
San Rafael, CA 94903

District Attorney, Mariposa County  
Post Office Box 730  
Mariposa, CA 95338

District Attorney, Mendocino County  
Post Office Box 1000  
Ukiah, CA 95482

District Attorney, Merced County  
550 W. Main Street  
Merced, CA 95340

District Attorney, Modoc County  
204 S Court Street, Room 202  
Alturas, CA 96101-4020

District Attorney, Mono County  
Post Office Box 617  
Bridgeport, CA 93517

District Attorney, Nevada County  
201 Commercial Street  
Nevada City, CA 95959

District Attorney, Orange County  
401 West Civic Center Drive  
Santa Ana, CA 92701

District Attorney, Placer County  
10810 Justice Center Drive, Ste 240  
Roseville, CA 95678

District Attorney, Santa Barbara County  
1112 Santa Barbara Street  
Santa Barbara, CA 93101

District Attorney, Santa Cruz County  
701 Ocean Street, Room 200  
Santa Cruz, CA 95060

District Attorney, Shasta County  
1355 West Street  
Redding, CA 96001

District Attorney, Sierra County  
PO Box 457  
Downieville, CA 95936

District Attorney, Siskiyou County  
Post Office Box 986  
Yreka, CA 96097

District Attorney, Solano County  
675 Texas Street, Ste 4500  
Fairfield, CA 9453

District Attorney, Stanislaus County  
832 12th Street, Ste 300  
Modesto, CA 95354

District Attorney, Sutter County  
446 Second Street  
Yuba City, CA 95991

District Attorney, Tehama County  
Post Office Box 519  
Red Bluff, CA 96080

District Attorney, Trinity County  
Post Office Box 310  
Weaverville, CA 96093

District Attorney, Humboldt County  
825 5th Street 4th Floor  
Eureka, CA 95501

District Attorney, Imperial County  
940 West Main Street, Ste 102  
El Centro, CA 92243

District Attorney, Inyo County  
230 W. Line Street  
Bishop, CA 93514

District Attorney, Kern County  
1215 Truxtun Avenue  
Bakersfield, CA 93301

District Attorney, Kings County  
1400 West Lacey Boulevard  
Hanford, CA 93230

District Attorney, Lake County  
255 N. Forbes Street  
Lakeport, CA 95453

District Attorney, Los Angeles County  
210 West Temple Street, Suite 18000  
Los Angeles, CA 90012

District Attorney, Plumas County  
520 Main Street, Room 404  
Quincy, CA 95971

District Attorney, San Benito County  
419 Fourth Street, 2nd Floor  
Hollister, CA 95023

District Attorney, San Bernardino  
County  
303 West 3rd Street, 6th Floor  
San Bernardino, CA 92415-0502

District Attorney, San Diego County  
330 West Broadway, Suite 1300  
San Diego, CA 92101

District Attorney, San Joaquin County  
222 E. Weber Ave. Rm. 202  
Stockton, CA 95202

District Attorney, San Luis Obispo  
County  
1035 Palm St, Room 450  
San Luis Obispo, CA 93408

District Attorney, San Mateo County  
400 County Ctr., 3rd Floor  
Redwood City, CA 94063

District Attorney, Tuolumne County  
423 N. Washington Street  
Sonora, CA 95370

District Attorney, Yuba County  
215 Fifth Street, Suite 152  
Marysville, CA 95901

Los Angeles City Attorney's Office  
City Hall East  
200 N. Main Street, Suite 800  
Los Angeles, CA 90012

San Diego City Attorney's Office  
1200 3rd Avenue, Ste 1620  
San Diego, CA 92101

San Francisco, City Attorney City Hall,  
234  
1 Dr. Carlton B Goodlett Pl.  
San Francisco, CA 94102

San Jose City Attorney's Office  
200 East Santa Clara Street, 16th Floor  
San Jose, CA 95113

Sacramento City Attorney's Office  
915 I Street, 4th Floor  
Sacramento, CA 95814