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\* Reply to NY Office

September 17, 2017

**AMENDED SIXTY-DAY NOTICE OF INTENT TO SUE FOR VIOLATION OF THE  
SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986**  
Cal, Health & Safety Code Section 25249.5, *et seq.* ("Proposition 65")

This Notice of Violation is provided to you pursuant to and in compliance with California Health and Safety Code Section 25249.7(d).

- For general information regarding the California Safe Drinking Water and Toxic Enforcement Act, see the attached summary provided by the California EPA (copies not provided to public enforcement agencies).
- This Notice of Violation is provided by the Center for Advanced Public Awareness, Inc ("CAPA"), 100 Promenade Circle, Suite 300, Sacramento, CA 95834. CAPA is a nonprofit corporation dedicated to protecting the environment, improving human health and supporting environmentally sound practices. Linda DeRose-Doubray is the Associate Director of and a responsible individual within CAPA.

**Description of Violation:**

- Violator: The name and address of the violator is:

**Wal-mart Stores, Inc.**  
702 SW 8<sup>th</sup> St.  
Bentonville, AR 72716

Carl Douglas McMillon, CEO/President

- Time Period of Exposure: The violations have been occurring since at least

August 16, 2017, and are continuing to this day.

- Provision of Proposition 65: This Notice of Violation covers the “warning provision of Proposition 65, which is found at California Health and Safety Code Section 25249.6.
- Chemical(s) Involved: The names of the listed chemicals involved in these violations are Di-butyl (DBP) Phthalate. On December 2, 2005 the State of California listed DBP as a chemical known to cause developmental toxicity and male and female reproductive toxicity. Exposures to the said chemicals occur from use of the products identified in this Notice.
- Type of Product: The specific type of product causing these violations is footwear (flipflops) made with printed graphic design. A non-exclusive example of this specific type of product are the **RED STRAP FLIP FLOP** with stars and stripes image, SKU No.0842088102234.

Description of Exposure: This Notice addresses consumer exposures to Phthalate.

Use of the products identified in this Notice results in human exposure to Phthalate. Phthalate is found in the red strap of the said printed graphic materials, as a chemical ingredient in some of the dyes, paints and other coloring agents used in the products and in the chemicals used in the graphic printing process. The routes of exposure for the violations is via dermal absorption when consumers (including children) wear, touch or handle the products; and dermal absorption directly through the skin when consumers wear, touch or handle the products. No clear and reasonable warning is provided with these products regarding the carcinogenic or reproductive hazards of Phthalate.

#### **Resolution of Noticed Claims:**

- Based on the allegations set forth in this Notice, CAPA intends to file a citizen enforcement lawsuit against the alleged violator unless such violator agrees in a binding written instrument to: (1) recall products already sold; (2) provide clear and reasonable warnings for products sold in the future or reformulate such products to eliminate the Phthalate exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health and Safety Code Section 25249.7(b). If the alleged violator is interested in resolving this dispute without Resort to expensive and time-consuming litigation, please feel free to contact CAPA through its counsel identified below. It should be noted that CAPA cannot:
  - (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 CAPA’s 60-day Notice. Therefore, while reaching an agreement with CAPA will resolve its claims, such agreement may not satisfy the public prosecutors.

- This Notice also serves as a demand that the alleged violator preserve and maintain all relevant evidence, including all electronic documents and data, pending resolution of this matter. Such relevant evidence includes but is not limited to all documents relating to the presence or potential presence of Phthalate in clothing made with graphic printed design or similar; purchase and sales information for such products; efforts to comply with Proposition 65 with respect to such products; communications with any person relating to the presence or potential presence of Lead in such products; and representative exemplars of each unit of any such products sold by the alleged violators in the year preceding this Notice.

**Please direct any inquiries regarding this Notice to CAPA's counsel Andrew M. Friedman, Esq., 16 Court St., Brooklyn, New York 11241, (718) 797-2488, [afriedman@friedmansanchez.com](mailto:afriedman@friedmansanchez.com).**

**CERTIFICATE OF MERIT**  
**Health & Safety Code § 25249.7(d)**

I, Andrew M. Friedman, 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 & Safety Code § 25249.6 by failing to provide clear and reasonable warnings.

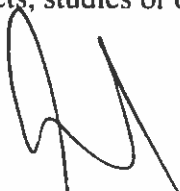
2. I am an attorney, and I represent the noticing party, the Center for Advanced Public Awareness.

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 exposures to the listed chemical that is the subject of the action.

4. Based on the information obtained through those consultations, 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 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 the Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in 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.

September 17, 2017

  
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Andrew M. Friedman

## APPENDIX A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

#### THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. Please refer to the reader to the statute and OEHHA's implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (appears in California law as Health and Safety Code Sections 25249.5 through 25249.13). The statute is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### WHAT DOES PROPOSITION 65 REQUIRE?

The "Proposition 65 Governor's List." Under Proposition 65, requires the lead agency (OEHHA) Governor to publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. CThis means that chemicals are

<sup>1</sup> All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

Only those chemicals that are on the list are regulated under Proposition 65~~this law~~. Businesses that produce, use, release or otherwise engage in activities involving listed ~~these~~ chemicals must comply with the following:

***Clear and reasonable warnings.*** A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies. ~~for example, when exposures are sufficiently low (see below).~~ The warning given must be "clear and reasonable." This means that the warning must: (1) clearly ~~say make known~~ that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

***Prohibition from discharges into drinking water.*** A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

#### ***DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?***

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

***Grace Periods.*** Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

***Governmental agencies and public water utilities.*** All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

***Businesses with nine or fewer employees.*** Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer

employees. This includes all full and part-time employees, not just those present in California.

**Exposures that pose no significant risk of cancer.** For chemicals that are listed under Proposition 65 as known to the State to cause cancer ("carcinogens"), a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "No Significant Risk Levels" (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 et seq. of the regulations for information concerning how these levels are calculated.

**Exposures that will produce no observable reproductive effect at 1,000 times the level in question.** For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level" divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 et seq. of the regulations for information concerning how these levels are calculated.

**Exposures to Naturally Occurring Chemicals in a Food.** Certain exposures to chemicals that naturally occur in foods-naturally (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

**Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water.** The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" level for chemicals that cause cancer or that is 1,000 times below the "no observable effect"

<sup>2</sup> See Section 25501(a)(4)

level for chemicals that cause reproductive toxicity, if an individual were exposed to that such an amount in drinking water.

### **HOW IS PROPOSITION 65 ENFORCED?**

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 ~~the regulations and in Title 11,~~ sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court of law to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.



If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties or any reimbursement for costs and attorney's fees, if the notice of violation was served on or after October 5, 2013, and the alleged violator has done all of the following within 14 days of being served notice:

- o Corrected the alleged violation;
- o Agreed to pay a civil penalty of \$500 (subject to change as noted below) to the private party within 30 days; and
- o Notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private-party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city greater than 750,000 in population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private-party.

A copy of the notice of special compliance procedure and proof of compliance form is included with this notice and can be downloaded from OEHHA's website at: <http://oehha.ca.gov/prop65/law/p65law72003.html>. The notice is reproduced here:

Date: \_\_\_\_\_

Name of Noticing Party or attorney for Noticing Party: \_\_\_\_\_

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Address: \_\_\_\_\_

Phone number: \_\_\_\_\_

**SPECIAL COMPLIANCE PROCEDURE**  
**PROOF OF COMPLIANCE**

You are receiving this form because the Noticing Party listed above has alleged that you are violating California Health and Safety Code §25249.6 (Prop. 65).

The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:

1. You have actually taken the corrective steps that you have certified in this form.
2. The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice.
3. The Noticing Party receives the required \$500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.
4. This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.

**PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY**

The alleged violation is for an exposure to; (check one)

Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.

A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination.

Environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises.

Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

**IMPORTANT NOTES:**

1. You have no potential liability under California Health and Safety Code §25249.6 if your business has nine (9) or fewer employees.
2. Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action

over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.

Date :

Name of Noticing Party or attorney for Noticing Party:

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Address:

Phone number:

**PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE**

**Certification of Compliance**

Accurate completion of this form will demonstrate that you are now in compliance with California Health and Safety Code §25249.6 for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):

- Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises;
- Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately showing its placement on my premises; OR
- Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

**Certification**

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

\_\_\_\_\_  
Signature of alleged violator or authorized representative    Date

\_\_\_\_\_  
Name and title of signatory

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...*

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at [P65Public.Comments@oehha.ca.gov](mailto:P65Public.Comments@oehha.ca.gov).

Revised: May 2014

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

## 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, 16 Court St., Suite 2600, Brooklyn, NY 11241.

On September 17, 2017, I served the following documents:

AMENDED 60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH HEALTH & SAFETY CODE §25249.7(d);  
PROPOSITION 65: SUMMARY;  
CERTIFICATE OF MERIT

on the Violator listed below via First Class Certified Mail through the United States Postal Service by placing true and correct copy in a sealed envelope, addressed to the Violator and providing such envelope to a United States Postal Service Representative:

Current President or CEO  
Wal-Mart Stores, Inc.  
702 SW 8th Street  
Bentonville, AR 72716

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:

By Uploading onto <a href="http://oag.ca.gov/OroO65/add-60-day-notice">http://oag.ca.gov/OroO65/add-60-day-notice</a>	The Attorney General of the State of California
By placing each envelope in a United States Postal Service Box, first class postage pre-paid	The District Attorneys for 44 California Counties and; The City Attorneys for Los Angeles, San Diego, San Jose, San Francisco.
By sending electronic mail	The District Attorneys for the following California Counties: San Luis Obispo, San Joaquin, Sonoma, Santa Clara, Napa, Lassen, Riverside, Tulare, Ventura, Yolo, Monterey, Sacramento, San Francisco and Contra Costa County

A list of address for each of the recipient is attached.  
Executed on September 17, 2017, Brooklyn, New York

  
\_\_\_\_\_  
Andrew M. Friedman