

# 60-DAY NOTICE OF VIOLATION

(Pursuant to California Health & Safety Code §§ 25249.5, *et seq.*)

November 29, 2017

To:

President  
Best Brands Consumer Products, Inc.  
25 Merrick Avenue  
Merrick, New York 11566

C. Douglas McMillon, CEO  
Wal-Mart Stores, Inc.  
c/o CT Corporation System  
818 W. Seventh St., Ste. 930  
Los Angeles, CA 90017

CC: California Attorney General's Office;  
District Attorney's Offices for All California Counties; and  
City Attorneys for San Francisco, San Diego, San Jose, Sacramento, and Los Angeles

## I. INTRODUCTION

Safe Products for Californians, LLC ("SPFC") is the noticing entity, acting in the interest of the general public. It seeks to reduce or eliminate the presence of hazardous substances in consumer products sold in California, and to ensure that California consumers are aware of the presence of such substances in consumer goods so that they can make an educated effort to limit their own exposure where deemed necessary.

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 violators, Best Brands Consumer Products, Inc. and Wal-Mart Store, 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 chemical ("listed chemical") identified below, as follows:

Product Exposure:	See Section VII, Exhibit A
Listed Chemical:	Di(2-ethylhexyl)phthalate ("DEHP")
Routes of Exposure:	Ingestion, Dermal
Types of Harm:	Cancer Birth Defects and Other Reproductive Harm

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

The specific type of product that is causing consumer 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 type covered by this Notice shall be referred to hereinafter as the "products." The sales of these products in California dating back to at least August 31, 2017 are subject to this Notice. As a result of 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 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 toxic chemical from the reasonably foreseeable use of the products.

California consumers are exposed to the listed chemical through the act of buying, acquiring or utilizing the products. By way of example but not limitation, direct exposures occur when people (including children) place the product, or a portion thereof, into their mouth or otherwise chew, lick, and/or bite the product, thereby allowing the listed chemical to leach out of the substrate. Citizens can be exposed to the listed chemical through the routine handling of the products through readily available amounts of the listed chemical on the surface of the product that will rub off on the user's fingers and hands, then ingested by way of subsequent hand-to-mouth activity.

### **III. CONTACT INFORMATION**

Please direct all questions concerning this notice to SPFC at the following address:

Tanya E. Moore, Esq.  
MISSION LAW FIRM, A.P.C.  
332 North Second Street  
San Jose, CA 95112  
Telephone (408) 298-2000  
Email: prop65@mission.legal

### **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, attached is 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, SPFC intends 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 exposure of California citizens to the listed chemical(s); 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 SPFC's counsel identified in Section III above. It should be noted that neither SPFC's counsel nor SPFC 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 SPFC will resolve its claims; such agreement may not satisfy the public prosecutors.

### **VI. ADDITIONAL NOTICE INFORMATION**

(THIS INFORMATION IS NOT REQUIRED TO BE PROVIDED UNDER CAL. CODE REGS., TITLE 22 § 12903(b)(4).)

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. SPFC believes and alleges 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>
Smart Travel – 4 Travel Containers UPC# 042887414242	Wal-Mart Stores, Inc.	Best Brands Consumer Products, Inc.

## VII. EXHIBIT A

<i>Product Category/Type</i>	<i>Such As*</i>	<i>Toxins</i>
Travel containers	Smart Travel – 4 Travel Containers UPC# 042887414242	Di(2-ethylhexyl)phthalate (“DEHP”)

\*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 SPFC’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.

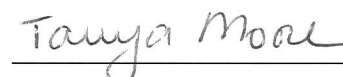
# CERTIFICATE OF MERIT

(Pursuant to California Health & Safety Code § 25249.7(d))

I, Tanya E. Moore, 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 & 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 experience 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 these 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; and
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 & 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 29, 2017

  
Tanya E. Moore

# CERTIFICATE OF SERVICE BY MAIL

I, Jessica Mendoza, hereby declare:

1. I am, and was at the time of service hereinafter mentioned, a citizen of the United States and a resident of the County of Santa Clara. I am over the age of 18 years and not a party to the within action. My business address is 332 North Second Street, San Jose, California, 95112.
2. On November 30, 2017, I served the following documents:
  - 60-Day Notice of Violation
  - Certificate of Merit
  - “The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary”on the following party by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below, and depositing it at a United States Postal Service Office for delivery both by First Class Mail and Certified Mail:

President Best Brands Consumer Products, Inc. 25 Merrick Avenue Merrick, New York 11566	C. Douglas McMillon, CEO Wal-Mart Stores, Inc. c/o CT Corporation System 818 W. Seventh St., Ste. 930 Los Angeles, CA 90017
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3. On November 30, 2017, I served the following documents:
  - 60-Day Notice of Violation
  - Certificate of Meriton 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 United States Postal Service Office for delivery by First Class Mail.
4. On November 30, 2017, I served the following documents:
  - 60-Day Notice of Violation
  - Certificate of Meriton the following party by causing a true and correct .PDF copy thereof to be sent via electronic mail to the party listed below, pursuant to Cal. Code Regs., title. 27, § 25903(c)(1):

Contra Costa County District Attorney  
sgrassini@contracostada.org

Lassen County District Attorney  
mlatimer@co.lassen.ca.us

Monterey County District Attorney  
Prop65DA@co.monterey.ca.us

San Luis Obispo County District Attorney  
edobroth@co.slo.ca.us

Napa County District Attorney  
CEPD@countyofnapa.org

Santa Clara County District Attorney  
EPU@da.sccgov.org

Riverside County District Attorney  
Prop65@rivcoda.org

Sonoma County District Attorney  
jbarnes@sonoma-county.org

Sacramento County District Attorney  
Prop65@sacda.org

Tulare County District Attorney  
Prop65@co.tulare.ca.us

San Francisco County District Attorney  
gregory.alker@sfgov.org

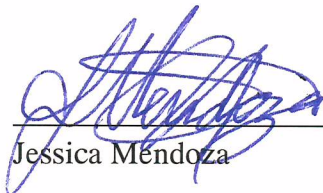
Ventura County District Attorney  
daspecialops@ventura.org

San Joaquin County District Attorney  
DAConsumer.Environmental@sjcd.org

Yolo County District Attorney  
cfepd@yolocounty.org

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: November 30, 2017

  
\_\_\_\_\_  
Jessica Mendoza

## SERVICE LIST

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

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

Amador County District Attorney  
708 Court Street #202  
Jackson, CA 95642

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

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

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

Contra Costa County District Attorney  
900 Ward St  
Martinez, CA 94553  
sgrassini@contracostada.org

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

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

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

Glenn County District Attorney  
P.O. Box 430  
Willows, CA 95988

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

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

Inyo County District Attorney  
168 North Edwards Street  
Independence, CA 93526

Kern County District Attorney  
1215 Truxtun Avenue, 4th Floor  
Bakersfield, CA 93301

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

Lake County District Attorney  
255 North Forbes Street  
Lakeport, CA 95453

Lassen County District Attorney  
220 South Lassen Street  
Susanville, CA 96130  
[field\_prop65ctacts\_title]  
mlatimer@co.lassen.ca.us

Los Angeles County District Attorney  
211 West Temple Street  
Suite 1200  
Los Angeles, CA 90012

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

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

Mariposa County District Attorney  
5101 Jones Street, P.O. Box 730  
Mariposa, CA 95338

Mendocino County District Attorney  
100 North State Street, P.O. Box 1000  
Ukiah, CA 95482

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

Modoc County District Attorney  
204 S. Court Street, Suite 202  
Alturas, CA 96101

Mono County District Attorney  
278 Main St  
Bridgeport, CA 93517

Monterey County District Attorney  
1200 Aguajito Rd  
Monterey, CA 93940  
Prop65DA@co.monterey.ca.us

Napa County District Attorney  
Carithers Building  
931 Parkway Mall  
P.O. Box 720  
Napa, CA 94559  
CEPD@countyofnapa.org

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

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

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

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

Riverside County District Attorney  
3072 Orange Street  
Riverside, CA 92501  
Prop65@rivcoda.org

Sacramento County District Attorney  
901 G Street  
Sacramento, CA 95814  
Prop65@sacda.org

San Benito County District Attorney  
419 4th Street, Second Floor  
Hollister, CA 95203

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

San Diego County District Attorney  
330 W. Broadway Street  
San Diego, CA 92101

San Francisco County District Attorney  
732 Brannan St  
San Francisco, CA 94103  
gregory.alker@sfgov.org

San Joaquin County District Attorney  
222 East Weber Avenue, Room 202  
Stockton, CA 95201  
DAConsumer.Environmental@sjcda.org

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San Luis Obispo, CA 93408  
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edobroth@co.slo.ca.us

San Mateo County District Attorney  
400 County Center, Third Floor  
Redwood City, CA 94063

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

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

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

Shasta County District Attorney  
1355 West Street  
Redding, CA 96001

Sierra County District Attorney  
100 Courthouse Square  
Downieville, CA 95936

Siskiyou County District Attorney  
P.O. Box 986  
Yreka, CA 96097

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

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

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

Sutter County District Attorney  
466 Second Street, Suite 102  
Yuba City, CA 95991

Tehama County District Attorney  
444 Oak Street, Room L  
Red Bluff, CA 96080

Trinity County District Attorney  
P.O. Box 310  
Weaverville, CA 96093

Tulare County District Attorney  
221 S Mooney Blvd  
Visalia, CA 95370  
Prop65@co.tulare.ca.us

Tuolumne County District Attorney  
423 North Washington Street  
Sonora, CA 95370

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

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

Yuba County District Attorney  
215 Fifth Street  
Marysville, CA 95901

Office of the City Attorney, Los Angeles  
800 City Hall East  
200 North Main Street  
Los Angeles, CA 90012

Office of the City Attorney, Sacramento  
915 I Street, 4th Floor  
Sacramento, CA 95814

Office of the City Attorney, San Diego  
1200 Third Avenue, Suite 1620  
San Diego, CA 92101

Office of the City Attorney,  
San Francisco  
1 Dr. Carlton B. Goodlett Place,  
Room 234  
San Francisco, CA 94102

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