

# 60-DAY NOTICE OF VIOLATION

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

---

**DATE:** March 4, 2020

**TO:** Michael Retek, President – Smartek USA Inc.  
Jason Kidd, President – 99 Cents Only Stores LLC  
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:** Paul Wozniak

---

## I. INTRODUCTION

---

My name is Paul Wozniak. 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, Smartek USA Inc. and 99 Cents Only Stores LLC (the “Violators”). The violations covered by this Notice consist of the product exposure, 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:	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. 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 March 4, 2017. 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, through the act of buying, acquiring or utilizing the Products, are exposed to the Listed Chemical. 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. Additionally, 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 California State Plan for Occupational Safety and Health incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997. This approval specifically placed certain conditions with regard to occupational exposures on Proposition 65, including that it does not apply to the conduct of manufacturers occurring outside the State of California. The approval also provides that an employer may use the means of compliance in the general hazard communication requirements to comply with Proposition 65. It also requires that supplemental enforcement is subject to the supervision of the California Occupational Safety and Health Administration. Accordingly, any settlement, civil complaint, or substantive court orders in this matter must be submitted to the Attorney General.

---

### **III. CONTACT INFORMATION**

---

Please direct all questions concerning this Notice to me through my counsel's office at the following address:

Paul Wozniak  
c/o Clifford A. Chanler  
The Chanler Group  
91 East Blithedale Avenue  
Mill Valley, CA 94941  
Telephone: (510) 647-8009

---

### **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, I have attached a copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary" which has been prepared by OEHHA.

---

### **V. RESOLUTION OF NOTICED CLAIMS**

---

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 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 costly litigation, please feel free to contact my counsel identified in Section III. 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 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 has also occurred without the requisite Proposition 65 “clear and reasonable warning” 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>
Sunbeam Home Essentials Sewing Kit, (60” Tape Measure), SB18, UPC #8 92013 00062 3	99 Cents Only Stores LLC San Joaquin County, California	Smartek USA Inc.

---

## VII. EXHIBIT A

---

<i>Product Category/Type</i>	<i>Such As*</i>	<i>Toxicant(s)</i>
Tape Measures	Sunbeam Home Essentials Sewing Kit, (60” Tape Measure), SB18, UPC #8 92013 00062 3	Di(2-ethylhexyl)phthalate

\*The specifically identified example of the Products 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. I am a resident or employed in the county where the mailing occurred. My business address is 91 East Blithedale Avenue, Mill Valley, CA 94941.

On March 4, 2020, I caused to be served the following documents:

**60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(d);**

**CERTIFICATE OF MERIT; AND**

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

XXXX **By First Class Certified Mail** through the United States Postal Service by placing true and correct copies of the above documents in a sealed envelope, addressed to each alleged violator listed below and providing such envelope to a United States Postal Service Representative.

Michael Retek, President  
Smartek USA Inc.  
12 Hinsdale Street  
Brooklyn, NY 11207

Jason Kidd, President  
99 Cents Only Stores LLC  
4000 East Union Pacific Avenue  
Commerce, CA 90023

On March 4, 2020, I caused to be served the following documents:

**60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(d); AND**

**CERTIFICATE OF MERIT**

XXXX **By First Class Mail** through the United States Postal Service by placing true and correct copies of the above documents in a sealed envelope, addressed to each entity on the attached "Mail Service List" and providing such envelope to a United States Postal Service Representative or placing such envelope in a United States Postal Service mailbox, postage prepaid.

XXXX **By Electronic Mail** by sending true and correct copies of the above documents to the electronic notification (Email) address(es) on the attached "Email Service List".

On March 4, 2020, I caused to be served the following documents:

**60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(d);**

**CERTIFICATE OF MERIT; AND**

**CERTIFICATE OF MERIT ATTACHMENTS**

XXXX **By Electronic Upload** by causing true and correct copies of the above documents to be uploaded to the California Attorney General's website at the web address on the attached "Electronic Upload Service List".

Executed on March 4, 2020, in Sacramento, California.



---

Caroline Liang

# 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 under Health and Safety Code § 25249.7(h)(2) including (i) the identity of the persons consulted with and relied on by the certifier, and (ii) certain facts, studies, or other data reviewed by those persons.

Dated: March 4, 2020



---

Clifford A. Chanler

# MAIL SERVICE LIST

The Honorable Michael Atwell  
Alpine County District Attorney  
P.O. 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, Suite 245  
Oroville, CA 95965

The Honorable Matthew R. Beauchamp  
Colusa County District Attorney  
346 Fifth Street, Suite 101  
Colusa, CA 95932

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

The Honorable Vern Pierson  
El Dorado County District Attorney  
778 Pacific Street  
Placerville, CA 95667

The Honorable Lisa Smittcamp  
Fresno County District Attorney  
2220 Tulare Street, Suite 1000  
Fresno, CA 93721

The Honorable Dwayne Stewart  
Glenn County District Attorney  
P.O. Box 430  
Willows, CA 95988

The Honorable Maggie Fleming  
Humboldt County District Attorney  
825 5th Street, Fourth Floor  
Eureka, CA 95501

The Honorable Gilbert Otero  
Imperial County District Attorney  
940 West Main Street, Suite 102  
El Centro, CA 92243

The Honorable Thomas Hardy  
Inyo County District Attorney  
P.O. Box Drawer D  
Independence, CA 93526

The Honorable Cynthia Zimmer  
Kern County District Attorney  
1215 Truxtun Avenue, 4<sup>th</sup> Floor  
Bakersfield, CA 93301

The Honorable Keith Fagundes  
Kings County District Attorney  
1400 West Lacey Boulevard  
Hanford, CA 93230

The Honorable Susan J. Krones  
Lake County District Attorney  
255 North Forbes Street  
Lakeport, CA 95453

The Honorable Susan Melyssah Rios  
Lassen County District Attorney  
2950 Riverside Drive, Suite 102  
Susanville, CA 96130

The Honorable Jackie Lacey  
Los Angeles County District Attorney  
211 West Temple Street, Suite 1200  
Los Angeles, CA 90012

The Honorable Sally O. Moreno  
Madera County District Attorney  
209 West Yosemite Avenue  
Madera, CA 93637

The Honorable Lori Frugoli  
Marin County District Attorney  
3501 Civic Center Drive, Suite 145  
San Rafael, CA 94903

The Honorable Walter Wall  
Mariposa County District Attorney  
5101 Jones Street  
P.O. Box 730  
Mariposa, CA 95338

The Honorable C. David Eyster  
Mendocino County District Attorney  
100 North State Street, Room G-10  
P.O. Box 1000  
Ukiah, CA 95482

The Honorable Kimberly Lewis  
Merced County District Attorney  
550 West Main Street  
Merced, CA 95340

The Honorable Samuel D. Kylo  
Modoc County District Attorney  
204 South Court Street, Suite 202  
Alturas, CA 96101

The Honorable Tim Kendall  
Mono County District Attorney  
278 Main Street  
P.O. Box 617  
Bridgeport, CA 93517

The Honorable Clifford Newell  
Nevada County District Attorney  
201 Commercial Street  
Nevada City, CA 95959

The Honorable Todd Spitzer  
Orange County District Attorney  
401 Civic Center Drive West  
Santa Ana, CA 92701

The Honorable R. Scott 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 Anne Marie Schubert  
Sacramento County District Attorney  
901 G Street  
Sacramento, CA 95814

The Honorable Candice Hooper  
San Benito County District Attorney  
419 4th Street  
Hollister, CA 95023

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

The Honorable Summer Stephan  
San Diego County District Attorney  
330 West Broadway Street  
San Diego, CA 92101

The Honorable Tori Verber Salazar  
San Joaquin County District Attorney  
P.O. Box 990  
Stockton, CA 95201

The Honorable Stephen M. Wagstaffe  
San Mateo County District Attorney  
400 County Center, 3<sup>rd</sup> Floor  
Redwood City, CA 94063

The Honorable Jeffrey Rosen  
Santa Clara County District Attorney  
70 West Hedding Street, West Wing  
San Jose, CA 95110

The Honorable Jeffrey S. Rosell  
Santa Cruz County District Attorney  
701 Ocean Street, Room 200  
Santa Cruz, CA 95060

The Honorable Stephanie A. Bridgett  
Shasta County District Attorney  
1355 West Street  
Redding, CA 96001

The Honorable Sandra Groven  
Sierra County District Attorney  
100 Courthouse Square, Room B1  
P.O. Box 457  
Downieville, CA 95936

The Honorable James Kirk Andrus  
Siskiyou County District Attorney  
311 4<sup>th</sup> Street  
Yreka, CA 96097

The Honorable Krishna A. Abrams  
Solano County District Attorney  
675 Texas Street, Suite 4500  
Fairfield, CA 94533

The Honorable Jill Ravitch  
Sonoma County District Attorney  
600 Administration Drive, Room 212 J  
Santa Rosa, CA 95403

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

The Honorable Amanda L. Hopper  
Sutter County District Attorney  
463 Second Street, Suite 102  
Yuba City, CA 95991

The Honorable Matthew Rogers  
Tehama County District Attorney  
444 Oak Street, Room L  
Red Bluff, CA 96080

The Honorable Donna Daly  
Trinity County District Attorney  
P.O. Box 310  
11 Court Street  
Weaverville, CA 96093

The Honorable Tim Ward  
Tulare County District Attorney  
221 South Mooney Boulevard, Rm 224  
Visalia, CA 93291-4593

The Honorable Laura L. Krieg  
Tuolumne County District Attorney  
423 North Washington Street  
Sonora, CA 95370

The Honorable Gregory D. Totten  
Ventura County District Attorney  
800 South Victoria Avenue, Suite 314  
Ventura, CA 93009

The Honorable Jeff W. Reisig  
Yolo County District Attorney  
301 Second Street  
Woodland, CA 95695

The Honorable Clint Curry  
Yuba County District Attorney  
215 Fifth Street  
Marysville, CA 95901

The Honorable Mike Feuer  
Office of the City Attorney, Los Angeles  
James K. Hahn City Hall East  
200 North Main Street, Suite 800  
Los Angeles, CA 90012

The Honorable Susan Acala Wood  
Office of the City Attorney, Sacramento  
915 I Street, 4th Floor  
Sacramento, CA 95814

The Honorable Mara W. Elliott  
Office of the City Attorney, San Diego  
1200 Third Avenue, Suite 1620  
San Diego, CA 92101

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

The Honorable Barbara Yook  
Calaveras County District Attorney  
891 Mountain Ranch Road  
San Andreas, CA 95249

## **EMAIL SERVICE LIST**

Nancy O'Malley, District Attorney  
Alameda County  
7776 Oakport Street, Suite 650  
Oakland, CA 94621  
CEPDProp65@acgov.org

The Honorable Barbara Yook  
Calaveras County District Attorney  
891 Mountain Ranch Rd.  
San Andreas, CA 95249  
Prop65Env@co.calaveras.ca.us

Stacey Grassini, Deputy District  
Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
sgrassini@contracostada.org

Dije Ndreu, Deputy District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
Prop65DA@co.monterey.ca.us

Allison Haley, District Attorney  
Napa County  
1127 First Street, Suite C  
Napa, CA 94559  
CEPD@countyofnapa.org

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

Gregory Alker, Assistant District  
Attorney  
San Francisco County  
732 Brannan Street  
San Francisco, CA 94103  
gregory.alker@sfgov.org

Valerie Lopez, Deputy City Attorney  
Office of the City Attorney, San Francisco  
1390 Market Street, 7th Floor  
San Francisco, CA 94102  
Valerie.Lopez@sfcityatty.org

Eric J. Dobroth, Deputy District Attorney  
San Luis Obispo County  
County Govt Center Annex, 4th Floor  
San Luis Obispo, CA 93408  
edobroth@co.slo.ca.us

Christopher Dalbey, Deputy District Attorney  
Santa Barbara County  
1112 Santa Barbara St.  
Santa Barbara, CA 93101  
DAProp65@co.santa-barbara.ca.us

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

## **ELECTRONIC UPLOAD SERVICE LIST**

Office of the California Attorney General  
Proposition 65 Enforcement Reporting  
ATTN: Prop 65 Coordinator  
P.O. Box 70550  
Oakland, CA 94612-0550  
<https://oag.ca.gov/prop65/add-60-day-notice>