

SECOND SUPPLEMENTAL SIXTY-DAY NOTICE OF VIOLATION

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

DATE: June 5, 2020

TO: Matthew Monaghan, Chief Executive Officer – Invacare Corporation
Jeffrey P. Bezos, CEO – Amazon.com, Inc.
Bradley S. Packer, President – Vitality Medical Inc
Diana C Miranda, President – 2nd Phoenix, Inc.
Diana C Miranda, President – SB Medical
Robert Kevin Alvey, Co-Founder – Alvey International, LLC
Robert Kevin Alvey, Co-Founder – Monster Scooter Parts
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") and supplements the 60-Day Notice of Violation sent on January 7, 2020 and on April 24, 2020. As noted above, notice is also being provided to the alleged violators, Invacare Corporation, Amazon.com, Inc., Vitality Medical Inc., 2nd Phoenix, Inc., SB Medical, Alvey International, LLC and Monster Scooter Parts (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 are causing consumer exposures in violation of Proposition 65, and that are covered by this Notice, are 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 June 5, 2018. 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
Chanler, LLC
72 Huckleberry Hill Road
New Canaan, CT 06840-3801
Telephone: (203) 594-9246

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, preferably, 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 particularly 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 are specific example of Products recently purchased and witnessed as being available for purchase or use in California that are 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 examples 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> |
|--|--|---------------------------------------|
| Invacare Wheelchair Elevating Legrests, Model/Ref T94HCP | Amazon.com, Inc. (https://www.amazon.com) | Invacare Corporation |
| Invacare Wheelchair Elevating Legrests, Model/Ref T94HCP | Vitality Medical Inc (https://www.vitalitymedical.com) | Invacare Corporation |
| The Aftermarket Group Armrest, Model/Ref AC015358 | Monster Scooter Parts (http://www.monsterscooterparts.com) | The Aftermarket Group |
| Invacare Full Length Armrest, Item 8881091686U67 | SB Medical/Mobility Equipment (https://www.mobilityequip.com) | Invacare Corporation |
| Invacare Legrest Calf Pad, Item 8881091819U550 | SB Medical/Mobility Equipment (https://www.mobilityequip.com) | Invacare Corporation |

VII. EXHIBIT A

| <i>Product Category/Type</i> | <i>Such As*</i> | <i>Toxicant(s)</i> |
|--|--|---------------------------|
| Wheelchairs with Armrests, Legrests and/or other accessible Vinyl Components | <p>Invacare Wheelchair Elevating Legrests, Model/Ref T94HCP</p> <p>The Aftermarket Group Armrest, Model/Ref AC015358</p> <p>Invacare Full Length Arm Pad, Item 8881091686U67</p> <p>Invacare Legrest Calf Pad, Item 8881091819U550</p> | Di(2-ethylhexyl)phthalate |

*The specifically identified example of the Products that are subject to this Notice are 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 these examples are **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 unless they have been reformulated.

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 72 Huckleberry Hill Road, New Canaan, CT 06840.

On June 5, 2020, I caused to be served the following documents:

**SECOND SUPPLEMENTAL SIXTY-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.

Matthew Monaghan, CEO
Invacare Corporation
One Invacare Way
Elyria, OH 44035

Jeffrey P. Bezos, CEO
Amazon.com, Inc.
410 Terry Avenue North
Seattle, WA 98109

Bradley S. Packer, President
Vitality Medical Inc
7910 S 3500 E
Salt Lake City, UT 84121

Diana C Miranda, President
2nd Phoenix, Inc.
14963 SW 175th St.
Miami, FL 33187

Diana C Miranda, President
SB Medical
7420 W 18th Ln
Hialeah, FL 33014-3717

Robert Kevin Alvey, Co-Founder
Alvey International, LLC
5045 Galley Road
Colorado Springs, CO 80915

Robert Kevin Alvey, Co-Founder
Monster Scooter Parts
5045 Galley Road
Colorado Springs, CO 80915

On June 5, 2020, I caused to be served the following documents:

**SECOND SUPPLEMENTAL SIXTY-DAY NOTICE OF VIOLATION SENT IN
COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(d); AND
CERTIFICATE OF MERIT**


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 June 5, 2020, I caused to be served the following documents:

**SECOND SUPPLEMENTAL SIXTY-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 June 5, 2020, in New Canaan, Connecticut.


Lorent Guimaraes

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 and/or the Listed Chemical in substantially similar products and exposes individuals through the same potential routes;
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: June 5, 2020



Clifford A. Chanler

EMAIL SERVICE LIST

The Honorable Michael Atwell
Alpine County District Attorney
P.O. Box 248
Markleeville, CA 96120
daoffice@alpinecountyca.gov

The Honorable Todd Riebe
Amador County District Attorney
708 Court Street
Jackson, CA 95642
amadorda@amadorgov.org

The Honorable Michael Ramsey
Butte County District Attorney
25 County Center Drive, Suite 245
Oroville, CA 95965
DA@ButteCounty.net

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

The Honorable David Hollister
Plumas County District Attorney
520 Main Street, Room 404
Quincy, CA 95971
davidhollister@countyofplumas.com

The Honorable Lisa Smittcamp
Fresno County District Attorney
2220 Tulare Street, Suite 1000
Fresno, CA 93721
damail@fresnocountyca.gov

The Honorable Maggie Fleming
Humboldt County District Attorney
825 5th Street, Fourth Floor
Eureka, CA 95501
districtattorney@co.humboldt.ca.us

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

Gary Lieberstein, District Attorney
Napa County
931 Parkway Mall
Napa, CA 94559
CEPD@countyofnapa.org

The Honorable Phillip J. Cline
Tulare County District Attorney
221 South Mooney Boulevard
Visalia, CA 93291-4593
Prop65@co.tulare.ca.us

The Honorable Tori Verber Salazar
San Joaquin County District Attorney
P.O. Box 990
222 E. Weber Avenue, Room 202
Stockton, CA 95201
DAConsumer.Environmental@sjcda.org

The Honorable Clifford Newell
Nevada County District Attorney
201 Commercial Street
Nevada City, CA 95959
DA.Prop65@co.nevada.ca.us

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

The Honorable Jackie Lacey
Los Angeles County District Attorney
211 West Temple Street, Suite 1200
Los Angeles, CA 90012
info@da.lacounty.gov

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

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

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

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

The Honorable Kimberly Lewis
Merced County District Attorney
550 West Main Street
Merced, CA 95340
Dainfo@co.merced.ca.us

The Honorable Samuel D. Kylo
Modoc County District Attorney
204 South Court Street, Suite 202
Alturas, CA 96101
da@co.modoc.ca.us

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

The Honorable Jeannine M. Pacioni
Monterey County District Attorney
1200 Aguajito Road
Monterey, CA 93940
Prop65DA@co.monterey.ca.us

The Honorable Jill R. Ravitch
Sonoma County District Attorney
600 Administration Drive
Sonoma, CA 95403
jbarnes@sonoma-county.org

Mark Ankcorn, Deputy City Attorney
Office of the City Attorney, San Diego
1200 Third Avenue, Suite 1620
San Diego, CA 92101
CityAttyProp65@sandiego.gov

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

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

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

The Honorable Laura L. Krieg
Tuolumne County District Attorney
423 North Washington Street
Sonora, CA 95370
da@tuolumnecounty.ca.gov

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

The Honorable Susan J. Kronen
Lake County District Attorney
255 North Forbes Street
Lakeport, CA 95453
Don.Anderson@lakecountyca.gov

The Honorable Jeffrey S. Rosell
Santa Cruz County District Attorney
701 Ocean Street, Room 200
Santa Cruz, CA 95060
Prop65DA@santacruzcounty.us

The Honorable Summer Stephan
San Diego County District Attorney
330 West Broadway Street
San Diego, CA 92101
SanDiegoDAProp65@sdccda.org

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

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

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

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

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

The Honorable Cynthia Zimmer
Kern County District Attorney
1215 Truxtun Avenue, 4th Floor
Bakersfield, CA 93301
caomailbox@kerncounty.com

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

The Honorable Anne Marie Schubert
Sacramento County District Attorney
901 G Street
Sacramento, CA 95814
Prop65@sacda.org

The Honorable R. Scott Owens
Placer County District Attorney
10810 Justice Center Drive, Suite 240
Roseville, CA 95678
infopcd@placer.ca.gov

The Honorable Richard Doyle
Office of the City Attorney, San Jose
200 East Santa Clara Street, 16th Floor
San Jose, CA 95113
cao.main@sanjoseca.gov

The Honorable James Kirk Andrus
Siskiyou County District Attorney
311 4th Street
Yreka, CA 96097
da@siskiyouda.org

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

Bud Porter, Supervising Deputy District Attorney
Santa Clara County
70 West Hedding Street
San Jose, CA 95110
EPU@da.sccgov.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

Michelle Latimar
Lassen County Program Coordinator
220 S. Lassen Street
Susanville, CA 96130
mlatimar@co.lassen.ca.us

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>