

SUPPLEMENTAL 60-DAY NOTICE OF VIOLATION

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

DATE: October 29, 2021

TO: Randy Koch, CEO - Koch Industries, Inc.;
John Venhuizen, CEO - Ace Hardware Corporation;
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: Susan Davia

RE: ACE Hardware Vinyl-Coated Clothesline

I. INTRODUCTION

My name is Susan Davia. 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 Koch Industries, Inc. and Ace Hardware Corporation (collectively, "Violator"). 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:	Inhalation, Ingestion, Dermal
Types of Harm:	Cancer, Birth Defects and Other Reproductive Harm

II. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

The specific types of products 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 below. All products within the type covered by this Notice shall be referred to hereinafter as "products." The sales of these products in California dating at least as far back as May 2019, are subject to this Notice. As a result of the sales of these products, exposures to each identified listed chemical have been occurring without clear and reasonable warnings as required by Proposition 65. Without proper warnings regarding the toxic effects of exposure 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.

CONSUMER PRODUCT EXPOSURE

California citizens, through the act of buying, acquiring or utilizing the products, are exposed to the identified listed chemical(s). As the product naturally degrades through repeat manipulation and exposure to heat, airflow, light radiation, etc., the listed chemical diffuses to and collects on the surface of the product. Children, men and women (especially those of childbearing age) are exposed to the listed chemical through direct dermal contact when they, among other activities, handle or touch the products

during packing, unpacking and use or otherwise come into direct dermal contact during use of the products. Children, men and women (especially those of childbearing age) ingest the listed chemical when they 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. This hand-to-mouth activity may come directly from the hand or indirectly through hand contact with another item (such as a food item, cigarette or writing device) that is then ingested or placed in the mouth. Children, men and women (especially those of childbearing age) will also directly ingest the listed chemical anytime they place the soft vinyl components of the products directly in their mouths to hold or otherwise mouth the product. Children, men and women (especially those of childbearing age) will additionally suffer dermal absorption exposure to the product as a result of direct contact between the product and skin during product handling and use. Children, men and women (especially those of childbearing age) will also suffer inhalation exposure to the listed chemical as it evaporates from the product surface into the air/gas phase.

III. CONTACT INFORMATION

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

Susan Davia
c/o Gregory Sheffer, Esq.
Sheffer Law Firm
232 E. Blithedale Avenue, Suite 210
Mill Valley, CA 94941
gregs@sheffer-law.net

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 Violator's reference, I have attached 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, I intend to file a citizen enforcement lawsuit against the alleged Violator unless such Violator enters 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 listed chemical exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health & Safety Code § 25249.7 (b). If the alleged Violator is interested in resolving this dispute without resorting to time-consuming and expensive litigation, please feel free to contact my counsel identified in Section III above. 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 examples within the categories or types of product are also provided below. I believe and allege 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 Violator and other retailers and distributors of the manufacturer.

Product*	Retailer	Manufacturer/Distributor
ACE Hardware vinyl-coated clothesline	Mountain Hardware and Sports, Marin ACE, Corbett's ACE, Chase ACE Hardware	Koch Industries, Inc.

VII. EXHIBIT A

Product Category/Type	Such As*	Toxins
ACE Hardware vinyl-coated clothesline	ACE heavy-duty 50' wire clothesline (Mfg# U6009F050AC3, Item 74121, SKU 0 82901 74121 3) and ACE heavy-duty 100' wire clothesline (Mfg#U6009F0100AC3, Item 74123, SKU 0 82901 74123 7)	DEHP

*The specifically identified example of the category or type of product that is subject to this Notice is for the recipient's benefit to assist in its investigation of, among other things, the magnitude of potential exposure 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 Violator is 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 recipient's 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.

VIII. DEMAND TO PRESERVE EVIDENCE

Please also accept this Notice as my formal demand and request that the Violators preserve - in the same manner and form as created, prepared and as completed - all witness statements, diagrams, pictures, videotapes, sketches, reports, or other documentation regarding this claim or the facts, circumstances or other information surrounding this claim. Please preserve all documents relating to the products and exemplars that are identified herein and the subject of this Notice. Please preserve all electronic mail communications regarding or relating to the products, product testing and Proposition 65 compliance attempts and all electronically stored data that depicts, describes or otherwise relates to the subject

Notice, the claims contained herein and related information. Please preserve all documents related to the products, packaging and design, including all correspondence relating to Proposition 65, phthalate content of the products and chemical warnings. Please preserve all documentation relating to the purchase and receipt of the Noticed products, as well as the further sale and delivery of the products, including all sales correspondence, purchase orders, shipping orders, invoices, vendor purchase agreements, etc. Please preserve all inventory control information and documentation relating to the products and the amount of each product in your possession from your original receipt until your final sale, distribution or disposal. Please understand this demand is comprehensive and relates to all documentation and information regarding the products, Proposition 65 and phthalates. Please understand that these requests are intended to include, but not be limited to, all documents or other "writings" as that term is defined by Evidence Code Section 250. Please preserve a minimum of 5 examples of each style of each noticed product. **Recipient may suffer adverse consequences if you choose to ignore this request to preserve evidence. Destruction of evidence in anticipation of a discovery request "would surely be a misuse of discovery within the meaning of Code of Civil Procedure section 2023" thereby exposing that party to a wide range of sanctions, including default and dismissal. (Cedars Sinai Med. Ctr. v. Sup.Ct. (Bowyer) (1998) 18 Cal.4th 1, 12.)**

IX. DEMAND FOR RETAILER TO IDENTIFY MANUFACTURER, PRODUCER, PACKAGER, IMPORTER, SUPPLIER, AND DISTRIBUTOR

Pursuant to 27 C.C.R. 25600.2(g), "[t]he retail seller of a product that may cause a consumer product exposure shall promptly provide the name and contact information for the manufacturer, producer, packager, importer, supplier, and distributor of the product to ... [a]ny person who has served notice under Section 25249.7(d)(1) of the Act alleging that the consumer product causes an exposure that requires a warning under the Act." This notice includes both the description of the specific product type that is subject to this notice as well as one or more specific examples of the product in Section VII. *Please also accept this Notice as a formal demand for any retailer seller receiving this notice to promptly provide the name and contact information for the manufacturer, producer, packager, importer, supplier, and distributor of the product(s) so identified.* This information may and should be communicated on a letter from the retailer delivered via electronic mail to my counsel as indicated in Section III of this notice.

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Gregory M. Sheffer, 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 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 Violator 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, including information identified in Health and 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: October 29, 2021

Sheffer Law Firm



Gregory M. Sheffer

PROOF OF SERVICE

I am employed in the County of Marin, State of California. 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 81 Throckmorton Avenue, Suite 202, Mill Valley, CA 94941.

On the date indicated below, I served the following documents, described as:

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

PROPOSITION 65: A SUMMARY (SERVED ONLY ON THE NOTICED VIOLATORS);

CERTIFICATE OF MERIT; AND

CERTIFICATE OF MERIT ATTACHMENTS (SERVED ONLY ON THE ATTORNEY GENERAL)

(1) on each entity or other mandatory recipient listed below with a complete postal mailing address by placing a true and correct copy of the foregoing document(s) in a sealed envelope addressed to each interested party as set forth hereafter and depositing each such envelope, with postage thereon fully prepaid, for collection and mailing with the United States Postal Service or agent authorized to accept mail on behalf of the United States Postal Service and (2) on each entity or other mandatory recipient listed below with an electronic mail address by electronically mailing PDF copies of the foregoing documents to them at such designated electronic address (with delivery confirmation requested and without receiving any unresolved return message of failed delivery).

John Verhuizen - CEO Ace Hardware Corporation 2200 Kensington Court Oak Brook, IL 60523	Randy Koch, CEO Koch Industries, Inc. 4200 Dahlberg Dr., Ste. 200 Minneapolis, MN 55422	Bao M. Vu Stoel Rives LLP bao.vu@stoel.com
The District Attorney for Each of the 58 counties in California <i>(see attached list of addresses)</i>	The City Attorney for Los Angeles, San Diego, San Jose, San Francisco and Sacramento <i>(see attached list of addresses)</i>	

I also caused to be served the same documents on the Attorney General of the State of California by electronically uploading a copy to the California Attorney General's Website at <https://oag.ca.gov/prop65/add-60-day-notice>,

October 29, 2021, service on California AG, all electronic service and mail service for Violators and November 1, 2021, for all public mail service. Executed this 29th day of October 2021, at Mill Valley, California. I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Heidi Boissonneau

SERVICE LIST

The Honorable Nancy O'Malley
Alameda County District Attorney
CEPDProp65@acgov.org

The Honorable Michael Atwell
Alpine County District Attorney
PO 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
Oroville, CA 95965

The Honorable Barbara Yook
Calaveras County District Attorney
Prop65Env@co.calaveras.ca.us

The Honorable Mathew Beauchamp
Colusa County District Attorney
310 Sixth Street
Colusa, CA 95932

The Honorable Stacey Grassini, DDA
Contra Costa County Dist. Attorney
sgrassini@contracosta.da.org

The Honorable Dale Trigg
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
2100 Tulare Street
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
inyoda@inyocounty.us

The Honorable Cynthia Zimmer
Kern County District Attorney
1215 Truxtun Avenue, 4th Fl.
Bakersfield, CA 93301

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

The Honorable Susan Kronen
Lake County District Attorney
255 North Forbes Street
Lakeport, CA 95453

The Honorable Stacey Montgomery
Lassen County District Attorney
c/o Michelle Latimer
mlatimer@co.lassen.ca.us

The Honorable George Gascon
Los Angeles County Dist. Attorney
211 West Temple Street, Suite 1200
Los Angeles, CA 90012

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

The Honorable Lori Frugoli
Marin County District Attorney
3501 Civic Center Drive, Room 130
San Rafael, CA 94903

The Honorable Walter W. Wall
Mariposa County District Attorney
mcda@mariposacounty.org

The Honorable C. David Eyster
Mendocino County District Attorney
P.O. Box 1000
Ukiah, CA 95482

The Honorable Kimberly Lewis
Merced County District Attorney
Prop65@countyofmerced.com

The Honorable Cynthia Campbell
Modoc County District Attorney
204 S. Court Street, Suite 202
Alturas, CA 96101

The Honorable Tim Kendall
Mono County District Attorney
P.O. Box 2053
Mammoth Lakes, CA 93546

The Honorable Dean Flippo
Monterey County District Attorney
c/o Dije Andreu, Deputy DA
Prop65DA@co.monterey.ca.us

The Honorable Allison Haley
Napa County District Attorney
CEPD@countyofnapa.org

Clifford H. Newell, District Attorney
Nevada County District Attorney
DA.Prop65@co.nevada.ca.us

The Honorable Todd Spitzer
Orange County District Attorney
300 North Flower Street
Santa Ana, CA 92701

Morgan Briggs Gire
Placer County District Attorney
prop65@placer.ca.gov

David Hollister, District Attorney
Plumas County District Attorney
davidhollister@countyofplumas.com

The Honorable Paul E. Zellerbach
Riverside County District Attorney
Prop65@rivcoda.org

The Honorable Anne Marie Schubert
Sacramento County District Attorney
Prop65@sacda.org

The Honorable Candice Hooper
San Benito County District Attorney
419 4th Street, Second Floor

Hollister, CA 95203

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

Summer Stephan, District Attorney
San Diego County District Attorney
SanDiegoDAProp65@sdccda.org

Mark Ankcorn, Deputy City Atty
San Diego
CityAttyProp65@sandiego.gov

Alethea M. Sargent ADA
350 Rhode Island Street
San Francisco, CA 94103
alethea.sargent@sfgov.org

Honorable Valerie Lopez, DCA
San Francisco, CA 94102
Valerie.Lopez@sfcityattv.org

The Honorable Tori Verber Salazar
San Joaquin County District Attorney
DAConsumer.Environmental@sjcda.org

The Honorable Eric Dobroth
San Luis Obispo County
Deputy District Attorney
edobroth@co.slo.ca.us

The Honorable Stephen Wagstaffe
San Mateo County District Attorney
400 County Center, Third Floor
Redwood City, CA 94063

The Honorable Joyce Dudley
Santa Barbara County Dist. Attorney
c/o Christopher Dalby, DDA
DAProp65@co.santa-barbara.ca.us

The Honorable Yen Dang DDA
Santa Clara County District Attorney
EPU@da.sccgov.org

The Honorable Jeff Rosell
Santa Cruz County District Attorney
Prop65DA@santacruzcounty.us

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

The Honorable Sandra Groven
Sierra County District Attorney
PO Box 457
Downieville, CA 95936

The Honorable James Kirk Andrus
Siskiyou County District Attorney
P.O. Box 986
Yreka, CA 96097

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

The Honorable Stephan R. Passalacqua
Sonoma County District Attorney
jbarnes@sonoma-county.org

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

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

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

The Honorable David Brady
Trinity County District Attorney
P.O. Box 310
Weaverville, CA 96093

The Honorable Phillip J. Cline
Tulare County District Attorney
Prop65@co.tulare.ca.us

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

The Honorable Gregory Totten
Ventura County District Attorney
daspecialops@ventura.org

The Honorable Jeff Reising
Yolo County District Attorney
cefpd@yolocounty.org

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
200 North Main Street, Suite 800
Los Angeles, CA 90012

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

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

The Honorable Dennis Herrera
Office of the City Attorney, San Francisco
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

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

Office of the California Attorney General
Proposition 65 Enforcement Reporting
Via Electronic filing
<https://oag.ca.gov/prop65/add-60-day-notice>