

# SIXTY-DAY NOTICE OF VIOLATION

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

**DATE:** April 26, 2024

**TO:** C. Douglas McMillon, CEO – Walmart Inc.  
California Attorney General’s Office;  
District Attorneys and Certain City Attorneys Throughout California

**FROM:** Jay Epps

My name is Jay Epps. I am a citizen of the State of California acting in furtherance of the public interest. I seek to promote awareness of exposures to certain 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, this letter is also being provided to the alleged violator, Walmart Inc., which is a person in the course of doing business in California (the “Violator”). The violations covered by this notice consist of the product exposure, routes of exposure and types of harm potentially resulting from exposure to the hazardous substance identified below (listed chemical), as follows:

Products:	Lead tape, Including Kits Containing Such Items
Listed chemical:	Lead
Routes of Exposure:	Ingestion and Dermal
Types of Harm:	Cancer and Birth Defects and Other Reproductive Harm

## **I. NATURE OF ALLEGED VIOLATION (CONSUMER PRODUCT EXPOSURE)**

The specific types of products that are causing consumer exposures and potentially occupational exposures, in violation of Proposition 65, and that are covered by this letter 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 April 26, 2020. Without proper warnings regarding the toxic effects of exposures to the listed chemical resulting from the use of 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, receiving 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 one or more contacts with the Products ceases.

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. Further, there are reasonably foreseeable uses of the Products that result in direct ingestion of the toxic metal.

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, by which the Products are branded (e.g. manufacturer's name appears on Product label), occurring outside the State of California so long as the named manufacturer is in the United States. The approval also provides that a United States employer may use the means of compliance in the general hazard communication requirements to comply with Proposition 65. It also requires that supplemental enforcement be subject to the supervision of the California Occupational Safety and Health Administration.

Any settlement, civil complaint or substantive court orders in this matter must be submitted to the state Attorney General. It is important to note that the sale of the Products through online means of transaction must provide the customer with a clear and reasonable warning for the risk of cancer and reproductive toxicity pursuant to Proposition 65 and its implementing regulations, even if the Violator's role is limited that of an online retail seller.

## **II. CONTACT INFORMATION**

Please direct all questions concerning this notice to me through my counsel's office at the following address, email and/or telephone number:<sup>1</sup>

Jay Epps  
c/o Clifford A. Chanler  
Chanler, LLC  
72 Huckleberry Hill Road  
New Canaan, CT 06840-3801  
Telephone: (475) 277-2932  
clifford@chanlerllc.com

Jay Epps  
c/o Steven Y. Chen  
Steven Y. Chen, APLC  
2650 River Avenue, Unit A  
Rosemead, California 91770  
Telephone: (626) 782-5017  
schen@schenlaw.com

## **III. 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 "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary" which has been prepared by OEHHA.

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<sup>1</sup> Should your attempt to contact me through my counsel be unsuccessful, I can be reached by mail at 1010 Liberty Drive, Suisun, CA 94585, or by phone at (415) 849-6181.

#### **IV. POTENTIAL RESOLUTION OF NOTICED CLAIMS**

Based on the assertions set forth in this notice, I intend to file a citizen enforcement action against the Violator unless such alleged person in the course of doing business enters into a binding written agreement (and/or upstream party such as a supplier enters into an agreement which would resolve one or more of the Products at issue shipped to the Violator) to: (a) recall Products already sold; (b) provide “clear and reasonable warnings” for Products to be sold in the future or, preferably, reformulate such Products to eliminate the lead exposures (or undertake best efforts to ensure upstream selling entities in the chain of commerce such as manufacturers, exporters, importers or distributors do so); and (c) pay an appropriate civil fine, if any, based on the factors enumerated in California Health & Safety Code §25249.7(b). If the alleged Violator is particularly interested in resolving this dispute without resorting to litigation, please feel free to contact my counsel identified in Section II above. It should be noted that neither my counsel nor I can finalize any settlement with the Violator until after the statutory sixty-day notice period has expired for the covered Products; nor speak for the state Attorney General, any state district attorney or the city attorneys who received this notice.

#### **V. ADDITIONAL NOTICE INFORMATION**

Examples of Products that were recently purchased and witnessed as being available for purchase or use in California that are within the Product categories covered by this notice are identified on Exhibit A. I allege that the sale of the offending Products has also occurred without the requisite Proposition 65 “clear and reasonable warning.”<sup>2 3</sup>

The examples on the attachments are for the recipient’s benefit to assist in its investigation of, among other things, the magnitude of potential exposures to the listed chemical from other items within the definition of Products. These examples are not meant to be an exhaustive list of each specific offending Product. 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, imported, distributed, facilitated for sale, sold, shipped, stored, or was otherwise within the notice recipient’s custody or control during the relevant period so as to ensure that the requisite toxic warnings were and continue to be provided to California citizens prior to purchase, especially if the upstream vendor (i.e., party with whom the Violator entered into a contract to sell the Products at issue) is exempt from a duty to warn or enforcement under Proposition 65.

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<sup>2</sup> If an applicable manufacturer, supplier, seller, and/or importer of one or more of the Products does not have a known agent for process of service in California and/or employs less than ten people as defined by the operative regulation, then the Violator is alleged to have heightened regulatory responsibilities beyond 27 CCR §25600.2(d) especially if it is also an importer and/or fulfills additional roles in the commercial marketplace such as being a “drop shipper” of the Product.

<sup>3</sup> In accordance with 27 CCR §25600.2(g), please “promptly” answer the questions on **Exhibit B**, and return with receipt confirmation to Jay Epps c/o Clifford Chanler, Chanler, LLC, 72 Huckleberry Hill Road, New Canaan, CT 06840, or via email to clifford@chanlerllc.com on or before May 13, 2024.

## EXHIBIT A

<i>Exemplar of Products</i>	<i>Item#</i>
SummerHouse 2 Grams Per Inch High Density Golf Lead Tape 1/2" x 60" Available 0.025 Inch Thickness for Tennis and Fishing	794185236
Gamma Lead Tape 0.25 x 72	110291954
8pcs Golf Lead Tape Strip Golfs Lead Tape Removable Lead Tape for Golfs Lead Weight Tape	5256504234
Tabata Lead Tape for Golf Shaft (3 sheets 5 grams/each)	751559948
3 Rolls Weighted Tapes Racket Lead Sheet Badminton Racket Lead Tapes for Training Equipment	5210543281
2Pcs Professional Racquet Weights Removable Racket Weight Tapes Convenient Golfs Lead Tapes	3923646846
ONRP Self Adhesive High Density Golf Clubs Tennis Badminton Racket Lead Weight Tapes	176207767
LYTIVAGEN 12 PCS Golf Lead Tape, Adhesive Lead Tape Add Swing Weight Lead Weighted Tape for Tennis Racket and Golf Club (5 * 1cm)	638058106
NEW Brampton Golf Swingweight Lead Foil Tape 1/2" X 100" Roll	26564760
Kripyery Golf Lead Tape Multi-use High Density Lead Strip Portable Professional Add Swing Weight Universal Golf Club Tennis Racket Weighted Lead Tape Golf Accessories	2107873097
2 Rolls of Golfs Clubs Lead Tapes Professional Racket Lead Tapes Portable Lead Tapes Golfing Supplies	2753234495
2Pcs Professional Racquet Weights Removable Racket Weight Tapes Convenient Golfs Lead Tapes	3176252938

## EXHIBIT B

As it relates to *each* of the Products, including those identified on **Exhibit A**, provide the full legal entity name and any known contact information (on or before May 13, 2024) for:

- (a) Any and all manufacturers
- (b) Any and all producers
- (c) Any and all packagers
- (d) Any and all direct vendors
- (e) Any and all exporters
- (f) Any and all shippers, and
- (g) Any and all sellers

Please email (or send via overnight delivery) the above-requested information to one of the addresses provided in Section II. Thank you.

# 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 **April 26, 2024**, I caused to be served the following documents:

**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.

C. Douglas McMillon, CEO  
Walmart Inc.  
702 SW 8th Street  
Bentonville, AR 72716

On **April 26, 2024**, I caused to be served the following documents:

**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 addresses on the attached "Email Service List."

On **April 26, 2024**, I caused to be served the following documents:

**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 April 26, 2024, in New Canaan, Connecticut.



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Lorent Guimaraes

# CERTIFICATE OF MERIT

California Health & Safety Code §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 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 are 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 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 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: April 26, 2024

  
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Clifford A. Chanler

# EMAIL SERVICE LIST

The Honorable Todd Riebe  
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# **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>