

SUPPLEMENTAL 60-DAY NOTICE OF VIOLATION

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

DATE: November 28, 2018

TO: Reuben Edvin Utudjian, Director – Viral Brands Ltd. t/a Mustard
Juliana Giliberto, Chief Executive Officer – If Products Inc. d/b/a Mustard
Steven Temares, Chief Executive Officer – Bed Bath and Beyond, Inc.
Barry Feld, Chief Executive Officer – Cost Plus, Inc.
Edmond Thomas, President – Tilly’s, Inc.
Edmond Thomas, President – World of Jeans & Tops
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: Laurence Vinocur

I. INTRODUCTION

My name is Laurence Vinocur. 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 March 21, 2018. As noted above, notice is also being provided to the alleged violators, Viral Brands Ltd. t/a Mustard, If Products Inc. d/b/a Mustard, Bed Bath and Beyond, Inc., Cost Plus, Inc., Tilly’s, Inc. and World of Jeans & Tops (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 21, 2015. 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:

Laurence Vinocur
c/o Kimberly Gates
The Chanler Group
Parker Plaza
2560 Ninth Street, Suite 214
Berkeley, CA 94710
Telephone: (510) 848-8880

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.

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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>
Mustard Cactus Push Pins, Green, M 16099, 3077055001, UPC #5 055998 804388	Tilly’s, Inc.; World of Jeans & Tops Stanislaus County, California	Viral Brands Ltd. t/a Mustard; If Products Inc. d/b/a Mustard
Mustard Cactus Push Pins, M 16099, 25568677, UPC #5 055998 804388	Bed Bath and Beyond, Inc.; Cost Plus, Inc. Santa Clara County, California	Viral Brands Ltd. t/a Mustard; If Products Inc. d/b/a Mustard

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VII. EXHIBIT A

<i>Product Category/Type</i>	<i>Such As*</i>	<i>Toxicant(s)</i>
Vinyl/PVC Push Pin Decorations	Mustard Cactus Push Pins, Green, M 16099, 3077055001, UPC #5 055998 804388 Mustard Cactus Push Pins, M 16099, 25568677, UPC #5 055998 804388	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 employed in Alameda County, California. My business address is 2560 Ninth Street, Suite 214, Berkeley, CA 94710.

On November 28, 2018, I caused to be served the following documents:

SUPPLEMENTAL 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.

Reuben Edwin Utudjian, Director
Viral Brands Ltd. t/a Mustard
Mustard New York
2247 80th Street
East Elmhurst, NY 11370

Juliana Giliberto, CEO
If Products Inc. d/b/a Mustard
2247 80th Street
East Elmhurst, NY 11370

Steven Temares, CEO
Bed Bath & Beyond Inc.
650 Liberty Avenue
Union, NJ 07083

Barry Feld, CEO
Cost Plus, Inc.
1201 Marina Village Parkway
Alameda, CA 94501

Barry Feld, CEO
Cost Plus, Inc.
200 4th Street
Oakland, CA 94607

Edmond Thomas, President
Tilly's, Inc.
10 Whatney
Irvine, CA 92618

Edmond Thomas, President
World of Jeans & Tops
10 Whatney
Irvine, CA 92618

On November 28, 2018, I caused to be served the following documents:

SUPPLEMENTAL 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, 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".

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On November 28, 2018, I caused to be served the following documents:

**SUPPLEMENTAL 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 November 28, 2018, at Berkeley, California.



Lindsey Cady

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 supplemental 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: November 28, 2018



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
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The Honorable Michael Ramsey
Butte County District Attorney
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Oroville, CA 95965

The Honorable Barbara Yook
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The Honorable Matthew R. Beauchamp
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Colusa, CA 95932

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Merced, CA 95340

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Modoc County District Attorney
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The Honorable R. Scott Owens
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Red Bluff, CA 96080

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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>