

# SECOND SUPPLEMENTAL 60-DAY NOTICE OF VIOLATION

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

**DATE:** July 1, 2010

**TO:** Mike Touture, President – Tung Yung International (USA) Inc.  
President – Tung Yung International Ltd.  
President – Tung Yung Stationery Manufactory Limited  
Mike Duke, President – Wal-Mart Stores, Inc.  
W. Bruce Johnson, Chief Executive Officer – Kmart 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:** Russell Brimer

## I. INTRODUCTION

My name is Russell Brimer. 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 violators, Tung Yung International (USA) Inc., Tung Yung International Ltd., Tung Yung Stationery Manufactory Limited, Wal-Mart Stores, Inc. and Kmart Corporation (the "Violators") and supplements the 60-Day Notices of Violation sent on December 15, 2009 and March 19, 2010. The violations covered by this Notice consist of the product exposures, routes of exposures, 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:	Lead
Routes of Exposure:	Ingestion, Dermal
Types of Harm:	Birth Defects and Other Reproductive Harm

## II. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

The specific types of products that are causing consumer and occupational 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 the "products." The sales of these products in California dating as far back as July 1, 2007 are subject to this notice. As a result of the sales of these products, exposures to the listed chemical have been occurring without clear and reasonable warnings as required by Proposition 65. 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 toxic chemical from the reasonably foreseeable use of the products.

## **A. CONSUMER PRODUCT EXPOSURE**

California consumers, through the act of buying, acquiring or utilizing the products, are exposed to the listed chemical. By way of example but not limitation, direct exposures occur when women of childbearing age and children place the product, or a portion thereof, into their mouth or otherwise chew, lick and/or bite the product thereby allowing the lead to leach out of the substrate. Also, the listed chemical can be directly ingested when small pieces of the vinyl coating are dislodged. Citizens can further be exposed to the listed chemical through the routine handling of the products through readily available amounts of the listed chemical on the surface of the product that will rub off on the user's fingers and hands then ingested by way of subsequent hand-to-mouth activity.

## **B. OCCUPATIONAL EXPOSURE**

Similarly, men and women in California use or otherwise handle the products as a part of their jobs and are, therefore, subject to occupational exposures to the listed chemical. Employees are exposed at any California business locations of the apparent manufacturer, distributor and retailer (and their agents, assigns and divisions) as well as all other California locations where the products, or the component parts thereof that include the listed chemical are, by way of example but not limitation, used, packed, unpacked, labeled, arranged, displayed, cleaned, stocked, stored, repaired or otherwise handled. These tasks cause employee exposure directly and/or indirectly to the listed chemical through the routine touching of the parts or portions of the products containing readily available amounts of the listed chemical on the surface. Additionally, exposure can occur through the routine touching and ingesting of other materials that are contaminated with the listed chemical from the products as a result of these tasks. These products are also used by sole proprietors and other persons in settings not covered by the Occupational Safety Health Act ("OSH Act"). This Notice alleges the violation of Proposition 65 with respect to occupational exposure governed by the California State Plan for Occupational Safety and Health. The State Plan 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 contained in the general hazard communication requirement 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 California Attorney General.

### **III. CONTACT INFORMATION**

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

Russell Brimer  
c/o Clifford A. Chanler  
The Chanler Group  
Parker Plaza  
2560 Ninth Street, Suite 214  
Berkeley, CA 94710  
Telephone: (510) 848-8880

### **IV. PROPOSITION 65 INFORMATION**

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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 "Proposition 65: A Summary" which has been prepared by OEHHA.

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

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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) provide clear and reasonable warnings for products sold in the future or reformulate such products to eliminate the lead exposures; and (2) 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 resort to time-consuming 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 as to new products covered by this Notice 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

*THIS INFORMATION IS NOT REQUIRED TO BE PROVIDED UNDER TITLE 27 CAL. CODE REGS., §25903(b)(2)(A).*

Identified below are specific examples of products recently purchased and witnessed as being available for purchase or use in California that are within the categories or types 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 Violators and other distributors and retailers of the manufacturer.

<i>Product*</i>	<i>Retailer(s)</i>	<i>Manufacturer(s)/Distributor(s)</i>
Clips and Pins Set, Green, 313-G (#0 27755 30313 2)	Wal-Mart Stores, Inc. Sacramento County, Northern California	Tung Yung International (USA) Inc.; Tung Yung International Ltd.; Tung Yung Stationery Manufactory Limited
Mainstays Office 150 Vinyl Coated Jumbo Clips, TY-WM505 (#0 27755 81224 5)	Wal-Mart Stores, Inc. Alameda County, Northern California	Tung Yung International (USA) Inc.; Tung Yung International Ltd.; Tung Yung Stationery Manufactory Limited
Office Select Vinyl Coated Paper Clips, #0-690883- 111 (#0 72000 84994 1)	Kmart Corporation Alameda County, Northern California	Tung Yung International (USA) Inc.; Tung Yung International Ltd.; Tung Yung Stationery Manufactory Limited

**VII. EXHIBIT A**

<i>Product Category/Type</i>	<i>Such As*</i>	<i>Toxins</i>
Color Coated Metal Fasteners (sold individually and/or sold as part of a set) containing Lead	Clips and Pins Set, Green, 313-G (#0 27755 30313 2)	Lead
Colored, Vinyl-Coated Paper Fasteners (sold individually and/or sold as part of a set) containing Lead	Mainstays Office 150 Vinyl Coated Jumbo Clips, TY-WM505 (#0 27755 81224 5)  Office Select Vinyl Coated Paper Clips, #0-690883-111 (#0 72000 84994 1)	Lead

\*The specifically identified examples of the types of products which are subject to this Notice are for the recipients' benefit to assist in their investigation of, among other things, the magnitude of potential exposure to the listed chemical from other items within the product categories/types 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 types 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 types or categories 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 are provided to California citizens prior to purchase.

# PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury:

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 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, CA 94710.

On July 1, 2010, I served the following documents:

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

**PROPOSITION 65: A SUMMARY;**

**CERTIFICATE OF MERIT; AND**

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

on the Violators listed below via First Class Certified Mail through the United States Postal Service by placing a true and correct copy in a sealed envelope, addressed to each Violator and providing each envelope to a United States Postal Service Representative:

Michael Touture, President  
Tung Yung International (USA) Inc.  
905 SE 21<sup>st</sup> Street  
Bentonville, AR 72712

Mike Duke, President  
Wal-Mart Stores, Inc.  
702 SW Eighth Street  
Bentonville, AR 72716

W. Bruce Johnson, Chief Executive Officer  
Kmart Corporation  
3333 Beverly Road  
Hoffman Estates, IL 60179

on the Violator listed below via First Class International Registered Mail through the United States Postal Service by placing a true and correct copy in a sealed envelope, addressed to such Violator and providing such envelope to a United States Postal Service Representative:

President  
Tung Yung International Ltd.  
Room 509-511 Kwong San Hong Centre  
151-153 Hoi Bun Road, Kwun Tong  
Kowloon, Hong Kong

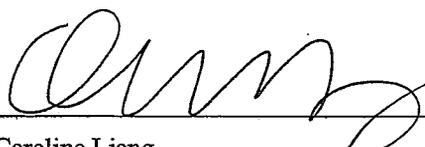
President  
Tung Yung Stationery Manufactory Limited  
Room 509-511 Kwong San Hong Centre  
151-153 Hoi Bun Road, Kwun Tong  
Kowloon, Hong Kong

as well as providing copies of the notice to the public enforcers by placing a true and correct copy in a sealed envelope, addressed to each party listed below, and served as follows:

<i>Via 2<sup>nd</sup> Day Air Service by placing such envelope in a Federal Express Drop-Off Box:</i>	The Attorney General of the State of California;
<i>By placing each envelope in a United States Postal Service mailbox, first class postage prepaid:</i>	The District Attorney for Each of the 58 counties in California; and  The City Attorney for Los Angeles, San Diego, San Jose, San Francisco and Sacramento

*A list of addresses for each of these recipients is attached.*

Executed on July 1, 2010, at Berkeley, 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 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, 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: 7/1/10

  
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Clifford A. Chanler

## SERVICE LIST

- The Honorable Nancy O'Malley  
Alameda County District Attorney  
1225 Fallon Street, Room 900  
Oakland, CA 94612
- The Honorable William Richmond  
Alpine County District Attorney  
270 Laramie Street, 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 Jeffrey Tuttle  
Calaveras County District Attorney  
891 Mountain Ranch Road  
San Andreas, CA 95249
- The Honorable John R. Poyner  
Colusa County District Attorney  
547 Market Street, Suite 102  
Colusa, CA 95932
- The Honorable Robert J. Kochly  
Contra Costa County District Attorney  
900 Ward Street  
Martinez, CA 94553
- The Honorable Michael Riese  
Del Norte County District Attorney  
450 H Street, Room 171  
Crescent City, CA 95531
- The Honorable Vernon Pierson  
El Dorado County District Attorney  
515 Main Street  
Placerville, CA 95667
- The Honorable Elizabeth Egan  
Fresno County District Attorney  
2220 Tulare Street, #1000  
Fresno, CA 93721
- The Honorable Robert Holzapfel  
Glenn County District Attorney  
P.O. Box 430  
Willows, CA 95988
- The Honorable Paul Gallegos  
Humboldt County District Attorney  
825 5<sup>th</sup> Street  
Eureka, CA 95501
- The Honorable Gilbert Otero  
Imperial County District Attorney  
940 West Main Street, Suite 102  
El Centro, CA 92243
- The Honorable Arthur Maillet  
Inyo County District Attorney  
P.O. Drawer D  
Independence, CA 93526
- The Honorable Edward R. Jagels  
Kern County District Attorney  
1215 Truxtun Avenue  
Bakersfield, CA 93301
- The Honorable Ronald Calhoun  
Kings County District Attorney  
1400 West Lacey Boulevard  
Hanford, CA 93230
- The Honorable Jon E. Hopkins  
Lake County District Attorney  
255 North Forbes Street  
Lakeport, CA 95453
- The Honorable Robert Burns  
Lassen County District Attorney  
220 S. Lassen Street, Ste. 8  
Susanville, CA 96130
- The Honorable Steve Cooley  
Los Angeles County District Attorney  
210 West Temple Street, Suite 18000  
Los Angeles, CA 90012
- The Honorable Michael Keitz  
Madera County District Attorney  
209 West Yosemite Avenue  
Madera, CA 93637
- The Honorable Edward Berberian  
Marin County District Attorney  
3501 Civic Center Drive, Room 130  
San Rafael, CA 94903
- The Honorable Robert Brown  
Mariposa County District Attorney  
5101 Jones Street, P.O. Box 730  
Mariposa, CA 95338
- The Honorable Meredith J. Lintott  
Mendocino County District Attorney  
P.O. Box 1000  
Ukiah, CA 95482
- The Honorable Larry Morse II  
Merced County District Attorney  
2222 M Street  
Merced, CA 95340
- The Honorable Gary Woolverton  
Modoc County District Attorney  
204 S. Court Street, Room 202  
Alturas, CA 96101
- The Honorable George Booth  
Mono County District Attorney  
P.O. Box 617  
Bridgeport, CA 93517
- The Honorable Dean Flippo  
Monterey County District Attorney  
P.O. Box 1131  
Salinas, CA 93902
- The Honorable Gary Lieberstein  
Napa County District Attorney  
931 Parkway Mall  
Napa, CA 94559
- The Honorable Clifford Newell  
Nevada County District Attorney  
110 Union Street  
Nevada City, CA 95959
- The Honorable Tony Rackauckas  
Orange County District Attorney  
401 Civic Center Drive West  
Santa Ana, CA 92701
- The Honorable Bradford Fenocchio  
Placer County District Attorney  
10810 Justice Center Drive, Suite 240  
Roseville, CA 95678
- The Honorable Jeff Cunan  
Plumas County District Attorney  
520 Main Street, Room 404  
Quincy, CA 95971
- The Honorable Rodric Pacheco  
Riverside County District Attorney  
4075 Main Street  
Riverside, CA 92501
- The Honorable Jan Scully  
Sacramento County District Attorney  
901 G Street  
Sacramento, CA 95814
- The Honorable Candice Hooper-Mancino  
San Benito County District Attorney  
419 4<sup>th</sup> Street, Second Floor  
Hollister, CA 95203
- The Honorable Michael Ramos  
San Bernardino County District Attorney  
316 N. Mountain View Avenue  
San Bernardino, CA 92415
- The Honorable Bonnie Dumanis  
San Diego County District Attorney  
330 W. Broadway Street  
San Diego, CA 92101
- The Honorable Kamala Harris  
San Francisco County District Attorney  
850 Bryant Street, Room 322  
San Francisco, CA 94103
- The Honorable James Willett  
San Joaquin County District Attorney  
P.O. Box 990  
Stockton, CA 95201
- The Honorable Gerald Shea  
San Luis Obispo County District Attorney  
1050 Monterey Street, Room 450  
San Luis Obispo, CA 93408
- The Honorable James Fox  
San Mateo County District Attorney  
400 County Center, Third Floor  
Redwood City, CA 94063
- The Honorable Ann Bramsen  
Santa Barbara County District Attorney  
1112 Santa Barbara Street  
Santa Barbara, CA 93101
- The Honorable Dolores Carr  
Santa Clara County District Attorney  
70 West Hedding Street, West Wing  
San Jose, CA 95110
- The Honorable Bob Lee  
Santa Cruz County District Attorney  
701 Ocean Street, Room 200  
Santa Cruz, CA 95060
- The Honorable Gerald Benito  
Shasta County District Attorney  
1525 Court Street, Third Floor  
Redding, CA 96001
- The Honorable Lawrence Allen  
Sierra County District Attorney  
100 Courthouse Square, Second Floor  
Downsville, CA 95936
- The Honorable James Kirk Andrus  
Siskiyou County District Attorney  
P.O. Box 986  
Yreka, CA 96097
- The Honorable David Paulson  
Solano County District Attorney  
675 Texas Street, Suite 4500  
Fairfield, CA 94533
- The Honorable Stephan Passalacqua  
Sonoma County District Attorney  
600 Administration Drive, Room 2122  
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- The Honorable Birgit Fladager  
Stanislaus County District Attorney  
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Modesto, CA 95354
- The Honorable Carl Adams  
Sutter County District Attorney  
446 Second Street  
Yuba City, CA 95991
- The Honorable Gregg Cohen  
Tehama County District Attorney  
PO BOX 519  
Red Bluff, CA 96080
- The Honorable Michael B. Harper  
Trinity County District Attorney  
PO Box 310  
Weaverville, CA 96093
- The Honorable Phillip Cline  
Tulare County District Attorney  
423 South Mooney Boulevard, Suite 224  
Visalia, CA 93291
- The Honorable Donald Segerstrom, Jr  
Tuolumne County District Attorney  
423 North Washington Street  
Sonora, CA 95370
- The Honorable Gregory Totten  
Ventura County District Attorney  
800 South Victoria Avenue  
Ventura, CA 93009
- The Honorable Jeff Reising  
Yolo County District Attorney  
301 Second Street  
Woodland, CA 95695
- The Honorable Patrick McGrath  
Yuba County District Attorney  
215 Fifth Street  
Marysville, CA 95901
- The Honorable Carmen Trutanich  
Office of the City Attorney, Los Angeles  
200 North Main Street  
Los Angeles, CA 90012
- The Honorable Jan Goldsmith  
Office of the City Attorney, San Diego  
1200 Third Avenue, Suite 1620  
San Diego, CA 92101
- The Honorable Eileen M. Teichert  
Office of the City Attorney, Sacramento  
P.O. Box 1948  
Sacramento, CA 95812
- The Honorable Dennis J. Herrera  
Office of the City Attorney, San Francisco  
City Hall, Room 234  
San Francisco, CA 94102
- The Honorable Richard Doyle  
Office of the City Attorney, San Jose  
200 East Santa Clara Street  
San Jose, CA 95113
- Office of the California Attorney General  
Proposition 65 Enforcement Reporting  
ATTN: Prop 65 Coordinator  
1515 Clay Street, Suite 2000  
Oakland, CA 94612-0550