

# SUPPLEMENTAL 60-DAY NOTICE OF VIOLATION

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

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**DATE:** August 16, 2013

**TO:** Matt McElduff, President – Apex Medical Corporation  
Steven Fishman, Chief Executive Officer – Big Lots, Inc.  
Steven Fishman, Chief Executive Officer – Big Lots Stores, Inc.  
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

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## I. INTRODUCTION

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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 November 21, 2012. As noted above, notice is also being provided to the alleged violators, Apex Medical Corporation, Big Lots, Inc. and Big Lots Stores, Inc. (the “Violators”). 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 Chemicals: Tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”);  
Di(2-ethylhexyl)phthalate (“DEHP”)  
Routes of Exposure: Ingestion, Dermal, Inhalation  
Types of Harm: Cancer; Birth Defects and Other Reproductive Harm

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

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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 types covered by this Notice shall be referred to hereinafter as the “products.” Exposures to the listed chemicals from the use of the products have been occurring without clear and reasonable warnings as required by Proposition 65, dating as far back as October 28, 2012 (for TDCPP) and August 16, 2010 (for DEHP). Without proper warnings regarding the toxic effects of exposure to the listed chemicals 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 chemicals from the reasonably foreseeable use of the products.

**A. CONSUMER PRODUCT EXPOSURE (TDCPP)**

California citizens, including infants and children, through the act of buying, acquiring or utilizing the products, are exposed to the listed chemical. California citizens, including infants and children, 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. California citizens, including infants and children, are exposed to the listed chemical through direct dermal contact when they, among other activities, handle, touch or otherwise use the products. California citizens, including infants and children, inhale the listed chemical when, among other activities, they breathe indoor air with airborne particles that are released from the products containing the listed chemical.

**B. CONSUMER PRODUCT EXPOSURE (DEHP)**

California citizens, through the act of buying, acquiring or utilizing the products, are exposed to the listed chemical. 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. 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.

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**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:

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

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**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.

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**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) 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 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 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.

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**VI. ADDITIONAL NOTICE INFORMATION**

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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 products covered by this Notice. Based on publicly available information, the retailers, distributors and/or manufacturers of the examples within the categories or types of products 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 retailers and distributors of the manufacturer.

<i>Product*</i>	<i>Retailer(s)</i>	<i>Manufacturer(s)/Distributor(s)</i>
Apex 14-Day Pill Wallet, No: 70095, UPC #0 76855 70095 2	Active Forever; Independent Living Products, Inc. ( <a href="http://www.activeforever.com">http://www.activeforever.com</a> )	Apex Medical Corporation
The Cozy Buddy Neck Support Pillow with Memory Foam, UPC #6 32615 02310 7	Big Lots, Inc.; Big Lots Stores, Inc. San Joaquin County, Northern California	Apex Medical Corporation

**VII. EXHIBIT A**

<i>Product Category/Type</i>	<i>Such As*</i>	<i>Toxins</i>
Vinyl/PVC Cases for Pill/Medication Organizers containing Di(2-ethylhexyl)phthalate	Apex 14-Day Pill Wallet, No: 70095, UPC #0 76855 70095 2	Di(2-ethylhexyl)phthalate
Pillows with Foam Padding containing Tris(1,3-dichloro-2-propyl) phosphate	The Cozy Buddy Neck Support Pillow with Memory Foam, UPC #6 32615 02310 7	Tris(1,3-dichloro-2-propyl) phosphate

\*The specifically identified examples of the types of 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 exposure to the listed chemicals 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 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; my business address is Parker Plaza, 2560 Ninth Street, Suite 214, Berkeley, CA 94710.

On August 16, 2013, I served the following documents:

**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 entities 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 the entities listed below and providing each envelope to a United States Postal Service Representative:

Matt McElduff, President  
Apex Medical Corporation  
921 East Amidon Street  
Sioux Falls, SD 57104

Matt McElduff, President  
Apex Medical Corporation  
P.O. Box 2526  
Sioux Falls, SD 57101

Steven Fishman, Chief Executive Officer  
Big Lots, Inc.  
300 Phillipi Road  
Columbus, OH 43228

Steven Fishman, Chief Executive Officer  
Big Lots Stores, Inc.  
300 Phillipi Road  
Columbus, OH 43228

as well as by providing copies of the above documents electronically uploaded to the public enforcers according to directions from their respective offices, and/or by placing a true and correct copy in a sealed envelope, addressed to each party listed below, and served as follows:

<i>Electronically Uploaded to the Attorney General's website, and sent 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, 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 August 16, 2013, at Berkeley, California.



Caroline Liang

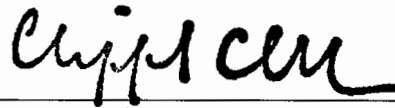
# CERTIFICATE OF MERIT

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 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 chemicals 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: August 16, 2013



Clifford A. Chanler

## SERVICE LIST

The Honorable Nancy O'Malley  
Alameda County District Attorney  
1225 Fallon Street, Room 900  
Oakland, CA 94612

The Honorable Terese Drabec  
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 Barbara Yook  
Calaveras County District Attorney  
891 Mountain Ranch Road  
San Andreas, CA 95249

The Honorable John R. Poyner  
Colusa County District Attorney  
346 Fifth Street  
Colusa, CA 95932

The Honorable Mark Peterson  
Contra Costa County District Attorney  
900 Ward Street  
Martinez, CA 94553

The Honorable Jon Alexander  
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 Maloney  
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  
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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 Lisa Green  
Kern County District Attorney  
1215 Truxtun Avenue  
Bakersfield, CA 93301

The Honorable Greg Strickland  
Kings County District Attorney  
1400 West Lacey Boulevard  
Hanford, CA 93230

The Honorable Donald Anderson  
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

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3501 Civic Center Drive, Room 130  
San Rafael, CA 94903

The Honorable Robert Brown  
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5101 Jones Street, P.O. Box 730  
Mariposa, CA 95338

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

The Honorable Larry Morse II  
Merced County District Attorney  
550 W. Main 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  
P.O. Box 720  
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 Ronald Owens  
Placer County District Attorney  
10810 Justice Center Drive, Suite 240  
Roseville, CA 95678

The Honorable David Hollister  
Plumas County District Attorney  
520 Main Street, Room 404  
Quincy, CA 95971

The Honorable Paul Zellerbach  
Riverside County District Attorney  
3960 Orange Street  
Riverside, CA 92501

The Honorable Jan Scully  
Sacramento County District Attorney  
901 G Street  
Sacramento, CA 95814

The Honorable Candice Hooper  
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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  
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San Diego, CA 92101

The Honorable George Gascon  
San Francisco County District Attorney  
850 Bryant Street, Room 322  
San Francisco, CA 94103

The Honorable James Willett  
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Stockton, CA 95201

The Honorable Gerald Shea  
San Luis Obispo County District Attorney  
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San Luis Obispo, CA 93408

The Honorable Stephen Wagstaffe  
San Mateo County District Attorney  
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Redwood City, CA 94063

The Honorable Joyce Dudley  
Santa Barbara County District Attorney  
1112 Santa Barbara Street  
Santa Barbara, CA 93101

The Honorable Jeffrey Rosen  
Santa Clara County District Attorney  
70 West Hedding Street, West Wing  
San Jose, CA 95110

The Honorable Bob Lee  
Santa Cruz County District Attorney  
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Santa Cruz, CA 95060

The Honorable Stephen Carlton  
Shasta County District Attorney  
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Redding, CA 96001

The Honorable Lawrence Allen  
Sierra County District Attorney  
100 Courthouse Square, Second Floor  
Downieville, CA 95936

The Honorable James Kirk Andrus  
Siskiyou County District Attorney  
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Yreka, CA 96097

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675 Texas Street, Suite 4500  
Fairfield, CA 94533

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The Honorable Gregg Cohen  
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800 South Victoria Avenue  
Ventura, CA 93009

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Woodland, CA 95695

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Yuba County District Attorney  
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Marysville, CA 95901

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Los Angeles, CA 90012

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San Diego, CA 92101

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The Honorable Dennis J. Herrera  
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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