

LAW OFFICES
BRODSKY & SMITH, LLC

TWO BALA PLAZA, SUITE 510
BALA CYNWYD, PA 19004

610.667.6200
FAX 610.667.9029
www.brodsky-smith.com

NEW JERSEY OFFICE
1040 KINGS HIGHWAY NORTH, STE 601
CHERRY HILL, NJ 08034
856.795.7250

NEW YORK OFFICE
240 MINEOLA BOULEVARD
MINEOLA, NY 11501
516.741.4977

CALIFORNIA OFFICE
9595 WILSHIRE BLVD., SUITE 900
BEVERLY HILLS, CA 90212
877.534.2590

October 7, 2014

Barry J. Feld, President Or Current President/CEO Cost Plus, Inc. 530 W Mt. Pleasant Ave., Livingston, NJ 07039	Barry J. Feld, President Or Current President/CEO Cost Plus World Market 10860 Santa Monica Blvd., Los Angeles, CA 90025
---	--

AND THE PUBLIC PROSECUTORS LISTED ON THE DISTRIBUTION LIST ACCOMPANYING
THE ATTACHED CERTIFICATE OF SERVICE

Re: Notice of Violation of California Health & Safety Code §25249.5, *et seq.*

To Whom It May Concern:

Brodsky & Smith, LLC ("Brodsky Smith") represents Ema Bell ("Bell"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals in products sold in California and to improve human health by reducing hazardous substances contained in such items.

With respect to the product identified below, Mrs. Bell has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at Cal. Health & Safety Code §25249.5, *et seq.* This violation has occurred and continues to occur because the alleged Violator(s) identified below failed to provide required clear and reasonable warnings with this product. Section 25249.6 of the statute provides that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual ..." Without proper warnings regarding the toxic effects of exposures to this listed chemical that results from contact with this product, California citizens lack the information necessary to make an informed decision on whether and/or how to eliminate (or reduce) their risk of exposure to the listed chemical from the reasonably foreseeable use of the product.

Please allow his letter to serves as notice of this violation to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, Brodsky Smith intends to file a private enforcement action on behalf of Mrs. Bell sixty (60) days after effective service of this notice unless the public enforcement agencies¹ have commenced and are earnestly prosecuting an action to redress these violations.

¹ The public enforcement agencies that have been served with copies of this notice of violations are identified in the attached distribution list accompanying the Certificate of Service.

Alleged Violator(s): The name of the company's covered by this notice that Violated Proposition 65 (hereinafter "the Violator") is:

Cost Plus, Inc.

Consumer Product: The product that is the subject of this notice and the chemicals in this product identified as exceeding allowable levels are:

<i>Product</i>	<i>Retailer(s)</i>	<i>Manufacturer(s)/Distributor(s)</i>
NM EI 8.5" PLT 4A UPC# 24845083 PO# 200474503 Multi-color Garden Plate w/ Elephant, Made in China, Dishwasher and Microwave Safe	Cost Plus, Inc.	Cost Plus, Inc.

Listed Chemicals: This violation involves exposure to the chemical lead. On February 27, 1987, the State of California listed lead as a chemical known to cause adverse developmental and reproductive effects.

Violations: The alleged Violator knowingly and intentionally has exposed and continues to knowingly and intentionally expose consumers within the State of California to lead at levels that, upon reasonable use of the product, exceed the No Significant Risk Level without providing clear and reasonable warning of this exposure. In particular, the product does not warn that it contains chemicals known to the State of California to cause adverse developmental and reproductive effects.

Route of Exposure: The exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of the product. Consequently, the primary route of exposure to these chemicals is through ingestion and/or dermal contact, particularly when consumers, including children, place the product that has come into contact with food or beverages into their mouths; ingestion via hand to mouth contact after consumers touch or handle the product; and dermal absorption directly through the skin when consumers touch the product. People likely to be exposed include children.

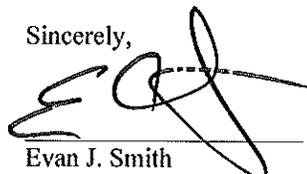
Duration of the Violations: Each of these ongoing violations has occurred on every day since at least July 11, 2014; as well as every day since the product was introduced to the California marketplace and following the one-year anniversary date of the listing at issue; and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is removed from the product.

Pursuant to Title 11, C.C.R. §3100, a certificate of merit is attached hereto. Pursuant to Title 27, C.C.R. §25903(b), a copy of "The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary" is also enclosed.

Consistent with the public interest goals of Proposition 65 and desire to have these ongoing violations of California law quickly rectified, Mrs. Bell is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation.

Mrs. Bell has retained me as legal counsel in connection with this matter. Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.

Sincerely,



Evan J. Smith

Attachments

Certificate of Merit

Certificate of Service

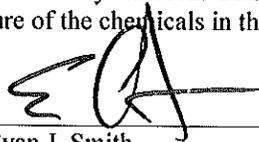
The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary

CERTIFICATE OF MERIT
Health & Safety Code Section 25249.7(d)

I, Evan J. Smith, 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 & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
- (2) I am the attorney for the noticing party, Ema Bell.
- (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 are the subject of the action.
- (4) Based on the information obtained through these 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 private action" means that the information provides a credible basis that all elements of plaintiff's case can be established and the information did not prove that the alleged violator(s) will be able to establish any of the affirmative defenses set forth in the statute.
- (5) We have had the products tested both by Mainline Environmental, LLC and by Microbac Laboratories, Inc., both of which have found that the lead contained in the product exceeds allowable levels of lead pursuant to the statute. With respect to the NM EL 8.5" PLT 4A, UPC# 24845083, PO# 200474503, Mainline Environmental, LLC using an XRF Analyzer has determined the lead content of the product to be approximately 10114.503 parts per million +/- 112.175. Microbac Laboratories, Inc. has also performed a wipe test on the product according to NIOSH 9100 and the wipe test was digested according to ASTM E1644. The extract was analyzed for lead by ICP-MS which resulted in 1.46 lead ug/Wipe. In addition, we have also consulted with Michael Conner O'Donnell, B.S. in Forensic & Toxicology Chemistry, who has advised that the concentration of lead in the product is known to be and can be harmful to people, particularly children. Mr. O'Donnell has advised that the primary route of exposure of the chemicals in this product is through ingestion and/or dermal contact.

Dated: October 7, 2014



Evan J. Smith
Attorney for Ema Bell

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within action. My business address is 2 Bala Plaza, Suite 510, Bala Cynwyd, Pennsylvania. I am employed in Montgomery County where the mailing occurred.

On October 7, 2014, I served the following documents: **Notice of Violation of California Health & Safety Code §25249.5, et seq.; Certificate of Merit; The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary** on the following entities and individuals listed below by placing a true and correct copy thereof in a sealed envelope, addressed to the person or entity listed below and depositing it in a US Postal Service Office with postage fully prepaid for delivery by Certified Mail:

Barry J. Feld, President Or Current President/CEO Cost Plus, Inc. 530 W Mt. Pleasant Ave., Livingston, NJ 07039	Barry J. Feld, President Or Current President/CEO Cost Plus World Market 10860 Santa Monica Blvd., Los Angeles, CA 90025
---	--

On October 7, 2014, I served the following documents: **Notice of Violation of California Health & Safety Code §25249.5, et seq.; Certificate of Merit; The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary** on each of the individuals on the service list attached hereto as Appendix B by placing a true and correct copy thereof in a sealed envelope, addressed to the person or entity listed below and depositing it in a US Postal Service Office with postage fully prepaid for delivery by Priority Mail.

Executed on October 7, 2014, in Bala Cynwyd, Pennsylvania.



Evan J. Smith

Appendix A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACTION 1986 (PROPOSITION 65); A SUMMARY

The following summary has been prepared by the Office of Environmental Health Hazard Assessment, the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and its implementing regulations (see citations below) for further information.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, Sections 25000 through 27000.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 735 chemicals have been listed as of November 16, 2001. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release, or otherwise engage in activities involving those chemicals must comply with the following:

Clear and Reasonable Warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed. Exposures are exempt from the warning

requirement if they occur less than twelve months after the date of listing of the chemical.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the chemical.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. The law exempts:

Governmental agencies and public water utilities. All agencies of the federal, State or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees.

Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "no significant risk" levels for more than 250 listed carcinogens.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level

(NOEL)," divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect.

Discharge that do not result in a "significant amount" of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the list chemical has not, does not, or will not enter any drinking water source, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" or "no observable effect" test if an individual were exposed to such an amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys (those in cities with a population exceeding 750,000). Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. A notice must comply with the information and procedural requirements specified in regulations (Title 27, California Code of Regulations, Section 25903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court of law to stop committing the violation.

FOR FURTHER INFORMATION...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900.

SERVICE LIST

Kamala D. Harris
Attorney General for the State of California
P.O. Box 944255
Sacramento, CA 94244

The Honorable Tom Hardy, District Attorney
INYO COUNTY
PO Box D
Independence, CA 93526

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

The Honorable Bob Lee, District Attorney
SANTA CRUZ COUNTY
701 Ocean Street, Room 200
Santa Cruz, CA 95060

The Honorable Bonnie Dumanis, District Attorney
SAN DIEGO COUNTY
330 West Broadway, Suite 1300
San Diego, CA 92101

The Honorable Ronald Scott Owens, District Atty.
PLACER COUNTY
10810 Justice Center Drive, Suite #240
Roseville, CA 95678

The Honorable Candice Hooper-Mancino,
District Attorney
SAN BENITO COUNTY
419 4th Street
Hollister, CA 95023-3801

The Honorable Carl Adams, District Attorney
SUTTER COUNTY
446 2nd Street
Yuba City, CA 95991

The Honorable Joyce E. Dudley, District Attorney
SANTA BARBARA COUNTY
1112 Santa Barbara Street
Santa Barbara, CA 93101

The Honorable Clifford Newell, District Attorney
NEVADA COUNTY
110 Union Street
Nevada City, CA 95959

The Honorable Donald A. du Bain, District Atty.
SOLANO COUNTY
675 Texas Street, Suite 4500
Fairfield, CA 94533

The Honorable Dean Flippo, District Attorney
MONTEREY COUNTY
P.O. Box 1131
Salinas, CA 93902

The Honorable Dennis J. Herrera, Office of the
City Attorney
SAN FRANCISCO COUNTY
City Hall, Room 234,
1 Dr. Carlton B. Godlett Place
San Francisco, CA 94102

The Honorable Jeffrey F. Rosen, District Attorney
SANTA CLARA COUNTY
70 West Hedding Street, West Wing
San Jose, CA 95110

The Honorable Michael Knowles, Acting
District Attorney
TUOLUMNE COUNTY
423 North Washington Street
Sonora, CA 95370

The Honorable Edward Berberian, District Attorney
MARIN COUNTY
3501 Civic Center Drive, Room 130
San Rafael, CA 94903

The Honorable Lisa Green, District Attorney
KERN COUNTY
1215 Truxtun Avenue, Fourth Floor
Bakersfield, CA 93301

The Honorable Elizabeth Egan, District Attorney
FRESNO COUNTY
2220 Tulare Street, Suite 1000
Fresno, CA 93721

The Honorable Michael R. Keitz, District Attorney
MADERA COUNTY
209 West Yosemite Avenue
Madera, CA 93637

The Honorable Jordan Funk, Interim Dist. Atty.
MODOC COUNTY
204 South Court Street, Room 202
Alturas, CA 96101

The Honorable Stephen Carlton, District Attorney
SHASTA COUNTY
1355 West Street
Redding, CA 96001

The Honorable Gilbert Otero, District Attorney
IMPERIAL COUNTY
940 West Main Street, Suite 102
El Centro, CA 92243

The Honorable Gregory Totten, District Attorney
VENTURA COUNTY
800 South Victoria Avenue, Suite 314
Ventura, CA 93009

The Honorable James Kirk Andrus, District Atty.
SISKIYOU COUNTY
P.O. BOX 986
Yreka, CA 96097

The Honorable Jan Goldsmith, Office of the
City Attorney
SAN DIEGO
1200 Third Ave., Suite 1620
San Diego, CA 92101

The Honorable David Hollister, District Attorney
PLUMAS COUNTY
520 Main Street, Room 404
Quincy, CA 95971

The Honorable Barbara Yook, District Attorney
CALAVERAS COUNTY
891 Mountain Ranch Road
San Andreas, CA 95249

The Honorable Donald Anderson, District Attorney
LAKE COUNTY
255 North Forbes Street
Lakeport, CA 95453

The Honorable Larry Morse II, District Attorney
MERCED COUNTY
550 West Main Street
Merced, CA 95340

The Honorable Gary Lieberstein, District Attorney
NAPA COUNTY
P.O. Box 720
Napa, CA 94559

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

The Honorable Gerald Shea, District Attorney
SAN LUIS OBISPO COUNTY
1035 Palm Street
San Luis Obispo, CA 93408

The Honorable Gregg Cohen, District Attorney
TEHAMA COUNTY
444 Oak Street, Room L
Red Bluff, CA 96080

The Honorable Stephen M. Wagstaffe, District Atty.
SAN MATEO COUNTY
400 County Center, Third Floor
Redwood City, CA 94063

The Honorable James Willett, District Attorney
SAN JOAQUIN COUNTY
P.O. BOX 990
Stockton, CA 95202

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

The Honorable Jeff Reisig, District Attorney
YOLO COUNTY
301 Second Street
Woodland, CA 95695

The Honorable John Poyner, District Attorney
COLUSA COUNTY
346 Fifth Street, Suite 101
Colusa, CA 95932

The Honorable George Gascon, District Attorney
SAN FRANCISCO COUNTY
850 Bryant Street, Room 325
San Francisco, CA 94103

The Honorable Lawrence Allen, District Attorney
SIERRA COUNTY
100 Courthouse Square, Second Floor - PO Box 457
Downieville, CA 95936

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

The Honorable Michael Ramos, District Attorney
SAN BERNARDINO COUNTY
303 West Third Street, 6th Floor
San Bernardino, CA 92415

The Honorable Jon Alexander, District Attorney
DEL NORTE COUNTY
450 H Street, Room 171
Crescent City, CA 95531

The Honorable Paul Gallegos, District Attorney
HUMBOLDT COUNTY
825 5th Street, 4th Floor
Eureka, CA 95501

The Honorable Richard Doyle, Office of the
City Attorney
City of San Jose
200 East Santa Clara Street, 16th Floor
San Jose, CA 95113-1905

The Honorable Robert Burns, District Attorney
LASSEN COUNTY
220 South Lassen Street, Suite 8
Susanville, CA 96130

The Honorable Mark A. Peterson, District Attorney
CONTRA COSTA COUNTY
900 Ward Street
Martinez, CA 94553

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

The Honorable Jill Ravitch, District Attorney
SONOMA COUNTY
600 Administration Drive, Room 212J
Santa Rosa, CA 95403

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

The Honorable Tony Rackauckas, District Attorney
ORANGE COUNTY
401 Civic Center Drive West
Santa Ana, CA 92701

The Honorable Michael Harper, District Attorney
TRINITY COUNTY
P.O. Box 310
Weaverville, CA 96093

The Honorable Michael Ramsey, District Attorney
BUTTE COUNTY
25 County Center Drive, Administration Building
Oroville, CA 95965

The Honorable Patrick McGrath, District Attorney
YUBA COUNTY
215 Fifth Street, Suite 152
Marysville, CA 95901

The Honorable Tim Ward, District Attorney
TULARE COUNTY
221 South Mooney Blvd., Suite 224
Visalia, CA 93291

The Honorable Thomas K. Cooke, District Attorney
MARIPOSA COUNTY
5101 Jones Street, P.O. Box 730
Mariposa, CA 95338

The Honorable Robert J. Maloney, District Attorney
GLENN COUNTY
P.O. Box 430
Willows, CA 95988

The Honorable Mike Feuer, City Attorney
City of Los Angeles
800 City Hall East, 200 N. Main Street
Los Angeles, CA 90012

The Honorable Greg Strickland, District Attorney
KINGS COUNTY
1400 West Lacey Blvd.
Hanford, CA 93230

The Honorable Jackie Lacey, District Atty's Office
LOS ANGELES COUNTY
210 West Temple Street, Suite 1800
Los Angeles, CA 90012-3210

The Honorable Todd Riebe, District Attorney
AMADOR COUNTY
708 Court Street #202
Jackson, CA 95642

The Honorable Vernon Pierson, District Attorney
EL DORADO COUNTY
515 Main Street
Placerville, CA 95667

The Honorable Terese Drabec, District Attorney
ALPINE COUNTY
270 Laramie Street, P.O. Box 248
Markleeville, CA 96120