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October 24, 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
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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 agencies<sup>1</sup> have commenced and are earnestly prosecuting an action to redress these violations.

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<sup>1</sup> 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 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>
Shanghai SP 4A UPC# 200477030 PO# 24878746 Soup Spoon – Ceramic, green with flower	Cost Plus, Inc.	Cost Plus, Inc.
PASSARO SLD PLT UPC# 24328524 PO# 200458774 Ceramic Plate – multicolor (green, blue, orange) with decorative picture of bird and flowers	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.

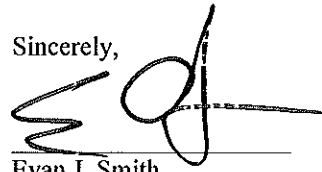
**Duration of the Violations:** Each of these ongoing violations has occurred on every day since at least September 17, 2014; as well as every day since the product was introduced to the California marketplace and following the one-year anniversary date of the listing at issue; and will continue every 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,

A handwritten signature in black ink, appearing to be 'EJ Smith', written over a horizontal line.

Evan J. Smith

Attachments

Certificate of Merit

Certificate of Service

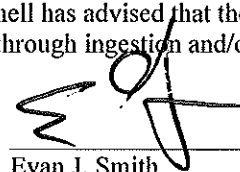
The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary

**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 SGS North America, 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 Shanghai SP 4A, UPC# 200477030, PO# 24878746, Mainline Environmental, LLC using an XRF Analyzer has determined the lead content of the product to be approximately 8386.930 parts per million +/- 96.706. With respect to the PASSARO SLD PLT, UPC# 24328524, PO# 200458774, Mainline Environmental, LLC using an XRF Analyzer has determined the lead content of the product to be approximately 3173.921 parts per million +/- 46.684. SGS North America, Inc. has also performed a lead leach test on each product according to Section 973.32. Analysis was performed by ICP-OES and/or ICP-MS. The results of the leach testing indicates leachable lead in the amount: 26.1 micrograms per milliliter in the spoon, and 1.00 micrograms per milliliter in the plate. 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 24, 2014



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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:

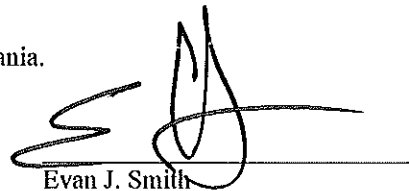
I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within action. My business address is 2 Bala Plaza, Suite 510, Bala Cynwyd, Pennsylvania. I am employed in Montgomery County where the mailing occurred.

On October 24, 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
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On October 24, 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 24, 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

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P.O. Box 944255  
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Modesto, CA 95354

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Santa Cruz, CA 95060

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Markleeville, CA 96120