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January 27, 2015

Tony Thal, President Or Current President/CEO Primeware, Inc. 2639 Market Street Garland, TX 75041	Arthur Stark, President Or Current President/CEO Bed Bath & Beyond, Inc. 650 Liberty Avenue Union, NJ 07083
Tony Thal, President Or Current President/CEO Primeware, Inc. P.O. Box 1549 Huntington Beach, CA 92647	Arthur Stark, President Or Current President/CEO Bed Bath & Beyond, Inc. c/o The Prentice-Hall Corporation System, Inc. 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833
Tony Thal, President Or Current President/CEO Primeware, Inc. c/o Tony Thal 7481 Anaconda Avenue Garden Grove, CA 92841	

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 Precila Balabbo ("Balabbo"), 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, Ms. Balabbo 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 this letter to serve as notice of this violation to the alleged Violators 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 Ms. Balabbo 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.

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

Primeware, Inc.  
Bed Bath & Beyond, Inc.

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

<b><i>Product</i></b>	<b><i>Retailer(s)</i></b>	<b><i>Manufacturer(s)/Distributor(s)</i></b>
Insulated Wine Clutch Color: black UPC# 8 59441 13022 3 SKU# 3022	Bed Bath & Beyond, Inc.	Primeware, Inc.

**Listed Chemicals:** This violation involves exposure to the chemical Di(2-ethylhexyl) phthalate (DEHP). On October 24, 2003, the State of California listed Di(2-ethylhexyl) phthalate (DEHP) as a chemical known to cause reproductive toxicity for the developmental and male reproductive endpoints.

**Violations:** The alleged Violators knowingly and intentionally have exposed and continue to knowingly and intentionally expose consumers within the State of California to Di(2-ethylhexyl) phthalate (DEHP) 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 reproductive toxicity for the developmental and male reproductive endpoints.

**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 dermal absorption through the user's hands or exposed shoulders during handling or carrying, and ingestion by handling the product with subsequent touching of the users hand to mouth.

**Duration of the Violations:** Each of these ongoing violations has occurred on every day since at least December 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.

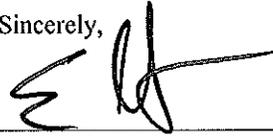
Pursuant to Title 11, C.C.R. §3100, a certificate of merit is attached hereto. Pursuant to Title 27, C.C.R. §25903(b), a copy of "The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary" is also enclosed.

<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.

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

Ms. Balabbo 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 read 'Evan J. Smith', written over a horizontal line.

Evan J. Smith

**Attachments**

Certificate of Merit

Certificate of Service

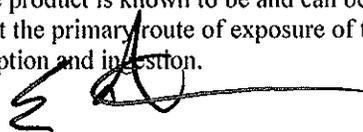
The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary

**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, Precila Balabbo.
- (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 product tested by Microbac Laboratories, Inc., and have found that the DEHP content contained in the product exceeds allowable levels of DEHP pursuant to the statute. With respect to the Insulated Wine Clutch, UPC# 8 59441 13022 3; Color: black; SKU# 3022, testing by Microbac demonstrated the presence of DEHP in the outside of the clutch at a concentration of 45,400 parts per million (ppm), and in the strap at a concentration of 219,410 parts per million (ppm). In addition, we have also consulted with Dr. Anthony Lagalante, Ph.D. of Main Line Environmental, LLC, who has advised that the concentration of DEHP in the product is known to be and can be harmful to people. Mr. Lagalante has advised that the primary route of exposure of the chemicals in this product is through dermal absorption and ingestion.

Dated: January 27, 2015



Evan J. Smith  
Attorney for Precila Balabbo

**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 January 27, 2015, 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:

Tony Thal, President Or Current President/CEO Primeware, Inc. 2639 Market Street Garland, TX 75041	Arthur Stark, President Or Current President/CEO Bed Bath & Beyond, Inc. 650 Liberty Avenue Union, NJ 07083
Tony Thal, President Or Current President/CEO Primeware, Inc. P.O. Box 1549 Huntington Beach, CA 92647	Arthur Stark, President Or Current President/CEO Bed Bath & Beyond, Inc. c/o The Prentice-Hall Corporation System, Inc. 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833
Tony Thal, President Or Current President/CEO c/o Tony Thal 7481 Anaconda Avenue Garden Grove, CA 92841	

On January 27, 2015, 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 January 27, 2015, in Bala Cynwyd, Pennsylvania.



\_\_\_\_\_  
Evan J. Smith

## SERVICE LIST

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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.