

# 60-DAY NOTICE OF VIOLATION

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

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**DATE:** August 25, 2016

**TO:** Peter Weintraub, President – BCP Home, Inc.;  
Leonard Marcus, President – Macy's Merchandising Group, Inc.;  
Jeffrey Kantor, President – Macy's West Stores, Inc.;  
Terry J. Lundgren, CEO – Macy's 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:** Susan Davia

**RE:** Vinyl Bedding Storage/Packaging Cases

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## I. INTRODUCTION

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My name is Susan Davia. 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 alleged violators BCP Home, Inc., Macy's Merchandising Group, Inc., Macy's West Stores, Inc. and Macy's Inc. (collectively, "Violator"). 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 Chemical:	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 type covered by this Notice shall be referred to hereinafter as "products." The sales of these products in California dating at least as far back as August 2014, are subject to this Notice. As a result of the sales of these products, exposures to each identified listed chemical have been occurring without clear and reasonable warnings as required by Proposition 65. Without proper warnings regarding the toxic effects of exposure 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.

### CONSUMER PRODUCT EXPOSURE

California citizens, through the act of buying, acquiring or utilizing the products, are exposed to the listed chemical. Children, men and women of childbearing age ingest the listed chemical when they directly contact the product with their mouth or place or hold the product in their mouths. Children,

men and women of childbearing age are exposed to the listed chemical through direct dermal contact when they, among other activities, handle or touch the products during use of the products. Children, men and women of childbearing age are exposed to the listed chemical through indirect dermal contact when they, among other activities, handle or touch objects or items stored on the products. Children, men and women of childbearing age ingest the listed chemical when they transfer the listed chemical from the products, or intermediate objects, to their mouths through hand-to-mouth activities that may continue to occur for a significant period after contact with the products stops.

### **OCCUPATIONAL EXPOSURE**

Similarly, men and women in California retail locations that sell the products handle the products and their packaging as a part of their jobs and are, therefore, subject to occupational exposures to the listed chemical. Employees are exposed at any California business location of the noticed retailer(s) 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 or through the inhalation of vapors emanating from the products and product packaging. These products are also used by sole proprietors and other persons in settings not covered by the federal Occupational Safety Health Act ("OSHA").

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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:

Susan Davia  
c/o Gregory Sheffer  
Sheffer Law Firm  
81 Throckmorton Ave., Suite 202  
Mill Valley, CA 94941  
Email: sheffesq@aol.com

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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 Violator's reference, I have attached a copy of "Proposition 65: A Summary" which summary 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 Violator unless such Violator enters 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 listed chemical exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health & Safety Code § 25249.7 (b). If the alleged Violator is 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 is a specific example of a product recently purchased and witnessed as being available for purchase or use in California that is within the category or type 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 Violator and other retailers and distributors of the manufacturer.

Product*	Retailer	Manufacturer/Distributor
vinyl bedding storage/packaging cases	Macy's	BCP Home, Inc., Macy's Merchandising Group, Inc., Macy's West Stores, Inc. and Macy's Inc.

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## VII. EXHIBIT A

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Product Category/Type	Such As*	Toxins
vinyl bedding storage/packaging cases	Martha Stewart Collection 6 Pc. Comforter Set (including but not limited to Madison Stripe)	DEHP

\*The specifically identified example of the category or type of product that is subject to this Notice is for the recipient's benefit to assist in its investigation of, among other things, the magnitude of potential exposure to the listed chemical from other items within the product category/type listed in Exhibit A. *It is important to note that this example is not meant to be an exhaustive or comprehensive identification of each specific offending product of the type listed under "Product Category/Type" in Exhibit A.* Further, it is this citizen's position that the alleged Violator is obligated to continue to conduct in good faith an investigation into other specific products within the type or category described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipient's 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.

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## VIII. SPECIAL NOTICE REGARDING OCCUPATIONAL EXPOSURES

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Pursuant to California Code of Regulations, Title 8, Section 338(b), please be advised that this notice alleges the violation of Proposition 65 with respect to occupational exposures 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 in the general hazard communication requirements 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 Attorney General

# CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Gregory M. Sheffer, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the party identified in the notice has 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 Violator will be able to establish any of the affirmative defenses set forth in the statute. The California sale of the subject products was completed without the communication of any compliant statutory warning regarding the alleged chemical exposure. In-store investigation at the noticed retailer indicated the occupational exposure to California employees at such stores was done without providing them a compliant statutory warning regarding such occupational exposure.
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 25, 2016

Sheffer Law Firm



Gregory M. Sheffer

## PROOF OF SERVICE

I am employed in the County of Marin, State of California. 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 81 Throckmorton Avenue, Suite 202, Mill Valley, CA 94941.

On the date indicated below, I served the following documents, described as:

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

**PROPOSITION 65: A SUMMARY (SERVED ONLY ON VIOLATORS);**

**CERTIFICATE OF MERIT; AND**

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

(1) on each entity or other mandatory recipient listed below with a complete postal mailing address by placing a true and correct copy of the foregoing document(s) in a sealed envelope addressed to each interested party as set forth hereafter and depositing each such envelope, with postage thereon fully prepaid, for collection and mailing with the United States Postal Service or agent authorized to accept mail on behalf of the United States Postal Service and (2) on each entity or other mandatory recipient listed below with an electronic mail address by electronically mailing PDF copies of the foregoing documents to them at such designated electronic address (with delivery confirmation requested and without receiving any unresolved return message of failed delivery).

Peter Weintraub, President BCP Home, Inc. 261 Fifth Avenue, Suite 1610 New York, NY 10016  Peter Weintraub, President BCP Home, Inc. 20 Morris Lane Scarsdale, NY 10583	Terry J. Lundgren, CEO Macy's Inc. 7 West Seventh Street Cincinnati, OH 45202 151 West 34 <sup>th</sup> Street New York, NY 10001	Mr. Leonard Marcus, President Macy's Merchandising Group, Inc. 11 Penn Plaza New York, NY 10001
Jeffrey Kantor, President Macy's West Stores, Inc. 7 West Seventh Street Cincinnati, OH 45202	The District Attorney for Each of the 58 counties in California (see attached list of addresses)	The City Attorney for Los Angeles, San Diego, San Jose, San Francisco and Sacramento (see attached list of addresses)

I also caused to be served the same documents on the Attorney General of the State of California by electronically uploading a copy to the California Attorney General's Website at <https://oag.ca.gov/prop65/add-60-day-notice>.

Executed this 25<sup>th</sup> day of August 2016, at Mill Valley, California. I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Heidi Boissonneau

# 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 Poyner  
Colusa County District Attorney  
346 Fifth Street  
Colusa, CA 95932

The Honorable Stacey Grassini, DDA  
Contra Costa County District  
Attorney  
c/o Stacey Grassini  
[sgrassini@contracosta.da.org](mailto:sgrassini@contracosta.da.org)

The Honorable Dale Trigg  
Del Norte County District Attorney  
450 H Street, Room 171  
Crescent City, CA 95531

The Honorable Vern Pierson  
El Dorado County District Attorney  
515 Main Street  
Placerville, CA 95667

The Honorable Lisa Smittcamp  
Fresno County District Attorney  
2220 Tulare Street, #1000  
Fresno, CA 93721

The Honorable Dwayne Stewart  
Glenn County District Attorney  
P.O. Box 430  
Willows, CA 95988

The Honorable Maggie Fleming  
Humboldt County District Attorney  
825 5th Street, Fourth Floor  
Eureka, CA 95501

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

The Honorable Thomas Hardy  
Inyo County District Attorney  
168 North Edwards Street  
Independence, CA 93526

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

The Honorable Keith Fagundas  
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 Stacey Montgomery  
Lassen County District Attorney  
c/o Michelle Latimer  
[mlatimer@co.lassen.ca.us](mailto:mlatimer@co.lassen.ca.us)

The Honorable Jackie Lacey  
Los Angeles County District Attorney  
210 West Temple Street, Suite 18000  
Los Angeles, CA 90012

The Honorable David Linn  
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 Thomas Cooke  
Mariposa County District Attorney  
5101 Jones Street, P.O. Box 730  
Mariposa, CA 95338

The Honorable C. David Eyster  
Mendocino County District Attorney  
100 North State Street, 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 Jordan Funk  
Modoc County District Attorney  
204 S. Court Street, Suite 202  
Alturas, CA 96101

The Honorable Tim Kendall  
Mono County District Attorney  
P.O. Box 617  
Bridgeport, CA 93517

The Honorable Dean Flippo  
Monterey County District Attorney  
c/o Dije Andreu, Deputy DA  
[Prop65DA@co.monterey.ca.us](mailto:Prop65DA@co.monterey.ca.us)

The Honorable Gary Lieberstein  
Napa County District Attorney  
[CEPD@countyofnapa.org](mailto:CEPD@countyofnapa.org)

The Honorable Clifford Newell  
Nevada County District Attorney  
201 Commercial Street  
Nevada City, CA 95959

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

The Honorable R. Scott 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 E. Zellerbach  
Riverside County District Attorney  
[Prop65@rivcoda.org](mailto:Prop65@rivcoda.org)

The Honorable Anne Marie Schubert  
Sacramento County District Attorney  
901 G Street  
Sacramento, CA 95814

[Prop65@sacda.org](mailto:Prop65@sacda.org)

The Honorable Candice Hooper  
San Benito County District Attorney  
419 4th Street, Second Floor  
Hollister, CA 95203

The Honorable Michael Ramos  
San Bernardino County District  
Attorney  
303 West 3rd Street, 6th Floor  
San Bernardino, CA 92415-0502

The Honorable Bonnie Dumanis  
San Diego County District Attorney  
330 W. Broadway Street  
San Diego, CA 92101

The Honorable Gregory Alker, ADA  
San Francisco County District  
Attorney  
[gregory.alker@sfgov.org](mailto:gregory.alker@sfgov.org)

The Honorable Tori Verber Salazar  
San Joaquin County District Attorney  
222 East Weber Avenue, Room 202  
Stockton, CA 95201

The Honorable Dan Dow  
San Luis Obispo County District  
Attorney  
1035 Palm Street, 4th Floor  
San Luis Obispo, CA 93408

The Honorable Stephen Wagstaffe  
San Mateo County District Attorney  
400 County Center, Third Floor  
Redwood City, CA 94063

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

The Honorable Yen Dang DDA  
Santa Clara County District Attorney  
[EPU@da.sccgov.org](mailto:EPU@da.sccgov.org)

The Honorable Jeff Rosell  
Santa Cruz County District Attorney  
701 Ocean Street, Room 200  
Santa Cruz, CA 95060

The Honorable Stephen Carlton  
Shasta County District Attorney  
1355 West Street  
Redding, CA 96001

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

The Honorable James Kirk Andrus  
Siskiyou County District Attorney  
P.O. Box 986  
Yreka, CA 96097

The Honorable Krishna Abrams  
Solano County District Attorney  
675 Texas Street, Suite 4500  
Fairfield, CA 94533

The Honorable Stephan R.  
Passalacqua  
Sonoma County District Attorney  
[jbarnes@sonoma-county.org](mailto:jbarnes@sonoma-county.org)

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

The Honorable Amanda Hopper  
Sutter County District Attorney  
463 Second Street, Suite 102  
Yuba City, CA 95991

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

The Honorable Eric Heryford  
Trinity County District Attorney  
P.O. Box 310  
Weaverville, CA 96093

The Honorable Phillip J. Cline  
Tulare County District Attorney  
[Prop65@co.tulare.ca.us](mailto:Prop65@co.tulare.ca.us)

The Honorable Laura Krieg  
Tuolumne County District Attorney  
423 North Washington Street  
Sonora, CA 95370

The Honorable Gregory Totten  
Ventura County District Attorney  
[daspecialops@ventura.org](mailto:daspecialops@ventura.org)

The Honorable Jeff Reisig  
Yolo County District Attorney  
[cfepd@yolocounty.org](mailto:cfepd@yolocounty.org)

The Honorable Patrick McGrath  
Yuba County District Attorney  
215 Fifth Street  
Marysville, CA 95901

The Honorable Mike Feuer  
Office of the City Attorney, Los Angeles  
800 City Hall East  
200 North Main Street  
Los Angeles, CA 90012

The Honorable James Sanchez  
Office of the City Attorney, Sacramento  
915 I Street, 4th Floor  
Sacramento, CA 95814

The Honorable Jan Goldsmith  
Office of the City Attorney, San Diego  
1200 Third Avenue, Suite 1620  
San Diego, CA 92101

The Honorable Dennis Herrera  
Office of the City Attorney, San  
Francisco  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

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

Office of the California Attorney  
General  
Proposition 65 Enforcement Reporting  
Via Electronic filing  
<https://oag.ca.gov/prop65/add-60-day-notice>