

60-DAY NOTICE OF VIOLATION

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

DATE: December 6, 2018

TO: Nicole Authier, President – MYTAGALONGS;
Steven H. Temares, CEO - Bed Bath & Beyond 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 Luggage Tag Products

I. INTRODUCTION

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 Mytagalongs, Bed Bath & Beyond, 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") and di(isononyl)phthalate (DINP)
Routes of Exposure:	Ingestion, Dermal, Inhalation
Types of Harm:	Cancer and Birth Defects or other Reproductive Harm

II. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

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 December 2016, 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. Consumers are exposed to and ingest the listed chemical directly when they place the products in their mouths.

III. CONTACT INFORMATION

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

IV. PROPOSITION 65 INFORMATION

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 has been prepared by OEHHA.

V. RESOLUTION OF NOTICED CLAIMS

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.

VI. ADDITIONAL NOTICE INFORMATION

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 Luggage Tag Products	Bed Bath & Beyond	Mytagalongs, Inc.

VII. EXHIBIT A

Product Category/Type	Such As*	Toxins
Vinyl Luggage Tag Products	Mytagalong Set of 2 Luggage Loops (all colors)	DINP, 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.

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.
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: December 6, 2018

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:

SECOND SUPPLEMENTAL 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).

Nicole Mauthier, President MYTAGALONGS, INC. 3701 Jarry East Montreal, Quebec H1Z2G1	Steven H. Temares, CEO Bed Bath & Beyond Inc. 650 Liberty Avenue Union, New Jersey 07083
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 6th day of December 2018, 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
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The Honorable Terese Drabec
Alpine County District Attorney
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The Honorable Todd Riebe
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The Honorable John Poyner
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The Honorable Maggie Fleming
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The Honorable Gilbert Otero
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The Honorable Edward Berberian
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The Honorable Thomas Cooke
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The Honorable Larry Morse II
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The Honorable Jordan Funk
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The Honorable Tim Kendall
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The Honorable Dean Flippo
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The Honorable Richard Doyle
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Office of the California Attorney General
Proposition 65 Enforcement Reporting
Via Electronic filing
<https://oag.ca.gov/prop65/add-60-day-notice>