

**60-DAY NOTICE OF VIOLATION  
OF CALIFORNIA HEALTH & SAFETY CODE § 25249.7(d)  
(PROPOSITION 65)**

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Date: October 8, 2021

To: Marie Ffolkes, CEO, TriMark USA, LLC *dba* TriMark United East;  
Debbie Jaffy, Principal, Culinary Essentials;  
Chris Homewood, President, Chef's Toys, LLC;  
California Attorney General's Office;  
District Attorney's Office for 58 Counties; and  
City Attorneys for San Francisco, San Diego, San Jose, Sacramento & Los Angeles

From: Keep America Safe and Beautiful

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**I. INTRODUCTION**

Keep America Safe and Beautiful is a California nonprofit corporation acting in the interest of the general public, pursuant to California Health & Safety Code § 25249.7(d). Keep America Safe and Beautiful seeks to promote awareness of exposures to toxic chemicals in products sold in California and, if possible, to improve human health by eliminating hazardous substances contained in such items, promoting corporate responsibility.

This 60-Day Notice of Violation (“**Notice**”) is being provided to the alleged violators, TriMark USA, LLC *dba* TriMark United East, Culinary Essentials, and Chef's Toys, LLC (“**Notice Recipients**”), as well as the California Attorney General's Office, the District Attorney's Offices for 58 Counties, and City Attorneys for San Francisco, San Diego, San Jose, Sacramento and Los Angeles.

Keep America Safe and Beautiful provides this Notice after identifying violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986, codified at California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”), based on the failure to provide a clear and reasonable health hazard warning in connection with the sale or use of the products, listed below, in the State of California. The Notice Recipients are hereby given notice they violated and continue to violate Proposition 65 with respect to the warning requirement, codified at California's Health & Safety Code § 25249.6: “No 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 giving a clear and reasonable warning to such individual.” Without proper warnings about the toxic effects of exposures to listed chemicals, citizens in California lack the information necessary to make an informed decision as to whether or how to eliminate or reduce their risk of exposure from the reasonably foreseeable use of products containing listed chemicals.

**II. NATURE OF ALLEGED VIOLATIONS**

**Product.** The specific type or category of products (“**Products**”) that are the subject of this Notice are as follows:

<b>Exemplar Product</b>	<b>Category/Type</b>	<b>Retailer</b>	<b>Manufacturer/Distributor</b>
Culinary Essentials 859303 Coated Utility Tongs, Tan, 9"; SKU #: 39990; UPC #: 859303	Kitchen utensils with vinyl components	Chef's Toys, LLC	TriMark USA, LLC <i>dba</i> TriMark United East; Culinary Essentials

Identified above is a specific example of Products recently purchased and witnessed as being available for sale or use in the State of California, within the *category* of offending products covered by this Notice. The identified retailers, manufacturers and/or distributors of the Products are based on publicly available information.

The Exemplar Product is identified for the Notice Recipients' benefit to assist in their investigation into the alleged violations that are the subject of this Notice. The specific identified Exemplar Product is not intended to be an exhaustive list of all such products potentially in violation of Proposition 65. It is Keep America Safe and Beautiful's position the Notice Recipients are now obligated to conduct a good faith investigation into other products within the category or of the type, identified above, that were manufactured, imported, sold or distributed for sale, or that have otherwise been in the Notice Recipients' custody or control during the relevant period, identified below, to ensure the requisite health hazard warnings are provided to individuals in California prior to purchase.

**Listed Chemical.** The chemical that is the subject of this Notice is di(2-ethylhexyl) phthalate ("DEHP"). The State of California listed DEHP as a chemical known to cause cancer on January 1, 1988 and as a chemical known to cause developmental and male reproductive toxicity on October 24, 2003.

**Routes of Exposure.** The exposures subject to this Notice result from the purchase, acquisition and handling of Products containing DEHP. Exposures occur when individuals, individuals, including children and women of childbearing age, handle, touch or otherwise utilize PVC kitchen utensils containing DEHP in accordance with the Products' intended uses, resulting in exposures through ingestion and dermal absorption. Individuals ingest DEHP when they touch or handle the Products, transferring the chemical from their fingers or hands to their mouths. Dermal absorption of DEHP occurs when individuals handle, touch, or utilize the Products in accordance with their intended uses.

**Violations and Time Period of Exposure.** Keep America Safe and Beautiful alleges the Notice Recipients knowingly and intentionally exposed, and continue to knowingly and intentionally expose, individuals within the State of California to DEHP, without first giving a health hazard warning regarding the chemical's toxic effects, as required by Proposition 65, by failing to provide clear and reasonable warnings to consumers and users the Products can expose users to DEHP.

Exposures caused by the use of the Products have occurred each day since the Products were introduced into the California marketplace, but, at a minimum, since October 8, 2020, and, potentially, as far back as October 8, 2018. Because the Products lack clear and reasonable warnings regarding the toxic effects of exposures to DEHP, each Product sold during this period and not accompanied by a warning constitutes a violation by the Notice Recipients and/or other sellers of the Products, whether sold directly through retailers located in, or with locations in, California, via the internet, or through catalog purchases by customers and individuals located in California. Moreover, these exposures are ongoing and will continue either until clear and reasonable warnings are provided to protect consumers and users or until this known toxic chemical is removed from the Products or reduced to allowable levels.

### **III. RESOLUTION OF NOTICED CLAIMS**

Consistent with the public interest goals of Proposition 65, Keep America Safe and Beautiful seeks to pursue a constructive resolution of this matter to quickly rectify ongoing violations of

California law. To that end, based on the allegations set forth in this Notice and pursuant to Health & Safety Code § 25249.7(d), Keep America Safe and Beautiful intends to file a private enforcement action in the public interest sixty (60) days after effective service of this Notice, unless the appropriate public enforcement agencies have commenced and are diligently prosecuting an action to rectify these allegations. If the Notice Recipients seek to resolve the claims alleged in this Notice without litigation, they may contact Keep America Safe and Beautiful's counsel at the address listed below.

It should be noted neither Keep America Safe and Beautiful or its counsel can: (1) finalize any settlement until after the expiration of the 60-day Notice period; or (2) speak for the California Attorney General or any District or City attorney in receipt of this Notice. Therefore, while reaching an agreement with Keep America Safe and Beautiful will satisfy its claims, the agreement may not satisfy any public prosecutors.

#### **IV. GENERAL INFORMATION AND SUMMARY OF PROPOSITION 65**

A copy of a summary of Proposition 65's provisions, prepared by the Office of Environmental Health Hazard Assessment ("OEHHA") is enclosed with the copy of the Notice served on the Notice Recipients for their reference. For further general information concerning Proposition 65, contact OEHHA's Proposition 65 Implementation Office at (916) 445-6900.

#### **V. CERTIFICATE OF MERIT**

Pursuant to Health & Safety Code § 25249.7(d) and Cal. Code. Regs. tit 11, § 3100, a Certificate of Merit is attached hereto. A copy of the Notice and Certificate of Merit is served on the California Attorney General and marked "Attorney General Copy: Contains Official Information Pursuant to Evidence Code Section 1040" with all supporting documentation, as required by Cal. Code. Regs. tit 11, § 3102, attached thereto.

#### **VI. CONTACT INFORMATION**

Please direct all questions, issues or communications regarding this 60-Day Notice of Violation and its potential resolution to Keep America Safe and Beautiful's counsel at the following address:

Keep America Safe and Beautiful  
c/o Kimberly Gates Johnson, Esq.  
Seven Hills LLP  
4 Embarcadero Center, Suite 1400  
San Francisco, California 94111  
Telephone: (415) 926-7247

*Attachments: Certificate of Merit; Proof of Service; The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary (to Violator(s) only); and Additional Confidential Supporting Information for Certificate of Merit (to AG only.)*

PRINTED ON 100% RECYCLED PAPER.

**CERTIFICATE OF MERIT**  
Health and Safety Code § 25249.7(d)

Re: Keep America Safe and Beautiful 's Notice of Proposition 65 Violations

1, Kimberly Gates Johnson, hereby declare and certify:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code § 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience and have assembled evidence attached to the copy for the California Attorney General as Exhibit 1 to this Certificate of Merit regarding the lack of warnings for the listed chemical that is the subject of the notice.
4. Based on the information obtained and on 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 that the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
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 the information identified in California Health & Safety Code § 25249.7(h)(2) (i.e. the identity of the persons consulted with and relied on by the certifier and the facts, studies and data reviewed by that person.)

Dated: October 8, 2021



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Kimberly Gates Johnson

## **PROOF OF SERVICE**

I, the undersigned, declare under penalty of perjury:

I am over the age of 18 years of age and not a party to this case. I am a resident of or employed in the county where the mailing occurred. My business address is 4 Embarcadero Center, Suite 1400, San Francisco, CA 94111.

On October 8, 2021, I caused to be served the following:

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

**THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF  
1986 (PROPOSITION 65): A SUMMARY; and**

**CERTIFICATE OF MERIT**

XXXX by **Certified First Class Mail** through the United States Postal Service by placing true and correct copies of the above documents in a sealed envelope, individually addressed to each alleged violator listed below and providing such envelope to a United States Postal Service Representative:

Marie Ffolkes, CEO  
TriMark USA, LLC dba  
TriMark United East  
9 Hampshire St.  
Mansfield, MA 02048

Debbie Jaffy, Principal  
Culinary Essentials  
5320 Ballard Ave NW  
Seattle, WA 98107

Chris Homewood, President  
Chef's Toys, LLC  
18430 Pacific St  
Fountain Valley, CA 92708

On October 8, 2021, I caused to be served true and correct copies of the following documents:

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

**CERTIFICATE OF MERIT**

XXXX by **First Class Mail** through the United States Postal Service by placing copies of the above documents in a sealed envelope, addressed to each entity on the attached "Service List" and providing such envelope to a United States Postal Representative, with correct postage. XXXX via **Electronic Mail**, by sending copies of the above documents, addressed individually, to the Recipient listed on the attached "Electronic Mail Service List".

On October 8, 2021, I caused to be served true and correct copies of the following documents:

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

**CERTIFICATE OF MERIT; and**

**CERTIFICATE OF MERIT ATTACHMENTS**

XXXX via **Electronic Mail**, by uploading the documents, addressed to California Attorney General at their website address, listed under the "Electronic Upload Service List".

Executed on the 8<sup>th</sup> day of October, 2021, at Folsom, California.



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