

# SIXTY-DAY NOTICE OF VIOLATION

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

**DATE:** April 8, 2022

**To:** David Nielson, President – Overstock.com, Inc.  
California Attorney General's Office  
District Attorneys and Certain City Attorneys Throughout California

**FROM:** Laurence Vinocur

My name is Laurence Vinocur. I am a citizen of the State of California acting in furtherance of the public interest. I seek to promote awareness of exposures to certain 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, this letter is also being provided to the alleged violator, Overstock.com, Inc, which is a person in the course of doing business in California (Violator). The violations covered by this notice consist of the product exposure, routes of exposure and types of harm potentially resulting from exposure to the hazardous substance identified below (listed chemical), as follows:

Products:	Solder Wire Containing Lead <sup>1</sup>
Listed Chemical:	Lead
Routes of Exposure:	Inhalation, Ingestion and Dermal
Types of Harm:	Birth Defects and Other Reproductive Harm

## **I. NATURE OF ALLEGED VIOLATION (CONSUMER PRODUCT EXPOSURE)**

Lead-based solder wire that are causing consumer exposures, in violation of Proposition 65, and that are covered by this letter shall be referred to hereinafter as the “Products.” Exposures to the listed chemical from the use of the Products have been occurring without the “clear and reasonable warning” required by Proposition 65, dating as far back as April 12, 2019. Without proper warnings regarding the toxic effects of exposures to the listed chemical resulting from the use of 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 identified toxicant.

California citizens, through the act of buying, acquiring, receiving or utilizing the Products, are exposed to the listed chemical. By way of example, consumers, other individuals, including women of childbearing age, ingest the listed chemical when they, among other activities, touch the Products and transfer the listed chemical from the Products to their mouths through hand-to-mouth activities that may continue to occur for a significant period after one or more contacts with the Products ceases.

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<sup>1</sup> The products covered by this 60-day notice are limited to those items which demonstrate the Violator's knowledge that a reasonably foreseeable use of the items will expose a consumer to the toxicant “lead” such as a specific reference the toxicant “lead,” or its element “pb,” in: (i) the product's name; (ii) the product description or information referenced prominently near the online display of the price and photograph for the item when offered for sale on the Violator's website; (iii) the search “filter,” if any, used to market the products online; (iv) the product packaging or container; or (v) in any other conspicuous manner likely to be read by the online purchaser before payment without considerable effort.

Additionally, consumers, workers and other individuals, including women of childbearing age, are exposed to the listed chemical through direct dermal contact when they, among other activities, handle, touch or otherwise use the Products. Further, there are reasonably foreseeable uses of the Products that result in direct ingestion and inhalation.

The California State Plan for Occupational Safety and Health 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 so long as they are based in the United States. The approval also provides that a United States employer may use the means of compliance in the general hazard communication requirements to comply with Proposition 65. It also requires that supplemental enforcement be subject to the supervision of the California Occupational Safety and Health Administration.

Any settlement, civil complaint or substantive court orders in this matter must be submitted to the state Attorney General. It is important to note that the sale of the Products through online means of transaction must provide the customer with a clear and reasonable warning for the risk of reproductive toxicity pursuant to Proposition 65 and its implementing regulations, even if the Violator's role is construed to be limited to that of an online retailer.

## **II. CONTACT INFORMATION**

Please direct all questions concerning this notice to me through my counsel's office at the following address, email and/or telephone number:

Laurence Vinocur  
c/o Steven Y. Chen  
STEVEN Y. CHEN, APLC  
2650 River Avenue, Unit A  
Rosemead, CA 91770-4609  
Schen@Schenlaw.com  
Telephone: (626) 782-5017

Laurence Vinocur  
c/o Clifford A. Chanler  
Chanler, LLC  
72 Huckleberry Hill Road  
New Canaan, CT 06840-3801  
clifford@chanlerllc.com  
Telephone: (203) 594-9246

## **III. 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 "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary" which has been prepared by OEHHA.

#### **IV. POTENTIAL RESOLUTION OF NOTICED CLAIMS**

Based on the assertions set forth in this notice, I intend to file a citizen enforcement action against the Violator unless we enter into a binding written agreement (and/or upstream merchants enter into one or more agreements with me resolving the products at issue) to: (a) 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; (b) provide “clear and reasonable warnings” for Products to be sold in the future or, preferably, reformulate such Products to eliminate potential exposures to lead (or undertake best efforts to ensure upstream selling entities in the chain of commerce such as manufacturers, exporters, importers or distributors do so); and (c) pay an appropriate civil fine, if any, based on the factors enumerated in California Health & Safety Code §25249.7(b). If the alleged Violator is particularly interested in resolving this dispute without resorting to litigation, please feel free to contact my counsel identified in Section II above. It should be noted that neither my counsel nor I can finalize any settlement with the Violator until after the statutory sixty-day notice period has expired for the covered products; nor speak for the state Attorney General, any state district attorney or the five city attorneys who received this notice.

#### **V. ADDITIONAL NOTICE INFORMATION**

“Examples” of Products that were recently purchased and/or available for purchase or use in California covered by this notice are identified on Exhibit A, along with at least one side the product packaging photographed on Exhibit B attached hereto. Based on publicly available information, any other vendor, supplier, seller, exporter, importer or other person in the course of doing business for each exemplar that was identified, if any, is also listed on Exhibit A. I allege that the sale of the offending Products has also occurred without the requisite Proposition 65 “clear and reasonable warning” including, but not limited to, transactions made through the internet.<sup>2 3</sup>

Such examples on the attachments are for the recipient’s benefit to assist in its investigation of, among other things, a computer search of the Products offered for sale on its website as well as the magnitude of potential exposures to the listed chemical from items within the definition of Products. These exemplars are not meant to be a comprehensive identification of each specific offending Product. Further, Mr. Vinocur’s position is that the alleged Violator is obligated to continue to conduct a good faith investigation into other lead-based solder wire described above that may have been manufactured, imported, distributed, facilitated for sale, sold, shipped, stored, or was otherwise within the notice recipient’s custody or control during the relevant period so as to ensure that the requisite toxic warnings were and continue to be provided to California citizens prior to purchase, especially if the upstream vendor (i.e., party with whom the Violator entered into a contract to sell the products at issue) is exempt from a duty to warn or enforcement under Proposition 65.

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<sup>2</sup> If a manufacturer, other distributor and/or importer of one or more of the Products does not have a known agent for process of service in California or employs less than ten people as defined by the operative regulation, then the online retail seller is alleged to have heightened regulatory responsibilities beyond 27 CCR §25600.2(d) especially if such entity is also a distributor or importer for the Products.

<sup>3</sup> In accordance with 27 CCR §25600.2(g), please “promptly” answer the questions on **Exhibit C**, and return with receipt confirmation to Laurence Vinocur c/o Clifford Chanler, Chanler, LLC, 72 Huckleberry Hill Road, New Canaan, CT 06840, or via email to clifford@chanlerllc.com on or before **May 3, 2022**.

## **Exhibit A**

<b><i>Products</i></b>	<b><i>Vendor/Supplier/Seller/ Manufacturer</i></b>
Alpha Fry AM51406 Electrical Solder, 0.062" Diameter Spool, 0.90 Oz, <i>As Illustrated in <b>Exhibit B</b></i>	Toolbox Supply
Alpha 12406 Non Electrical Acid Core Solder, 1 lb, <i>As Illustrated in <b>Exhibit B</b></i>	Life and Home
Alpha Fry AM33505 General Purpose Solder, 0.125" Diameter Spool, 4 Oz	Toolbox Supply
Alpha Fry Very Fine Rosin Core Solder & Dispenser, Model# 13461	Toolbox Supply Overstock.com
Alpha 21406 Electrical Rosin Core Solder, 8 Oz	Life and Home

## Exhibit B



## **Exhibit C**

As it relates to *each* of the Products, including those identified on **Exhibit A**, provide the full legal entity name and any known contact information (on or before **May 3, 2022**) for:

- (a) Any and all manufacturers
- (b) Any and all producers
- (c) Any and all packagers
- (d) Any and all direct vendors
- (e) Any and all exporters
- (f) Any and all shippers, and
- (g) Any and all sellers

Please email (or send via overnight delivery) the above-requested information to the address provided in Section II. Thank you.



# PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury:

I am over the age of 18 years and not a party to the within action. I am a resident or employed in the county where the mailing occurred. My business address is 72 Huckleberry Hill Road, New Canaan, CT 06840.

On **April 12, 2022**, I caused to be served the following documents:

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

**CERTIFICATE OF MERIT; AND**

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

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

David Nielson, President  
Overstock.com, Inc.  
799 West Coliseum Way  
Midvale, UT 84047

On **April 12, 2022**, I caused to be served the following documents:

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

**CERTIFICATE OF MERIT**

XXXX **By First Class Mail** I placed a true and correct copy of the foregoing document(s) in a sealed envelope addressed to each interested party as set forth below. I placed each such envelope, with postage thereon fully prepaid, for collection and mailing in one of the United States Post Office Boxes located at 18 Locust Avenue, New Canaan, Connecticut.

The Honorable Mike Feuer  
Los Angeles City Attorney  
City Hall East, Suite 800  
Los Angeles, CA 90012

Manuel Garcia, Jr.  
Head Deputy District Attorney  
County of Los Angeles  
211 W. Temple St., Suite 1000  
Los Angeles, CA 90012

On **April 12, 2022**, I caused to be served the following documents:

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

**CERTIFICATE OF MERIT**

XXXX **By Electronic Mail** by sending true and correct copies of the above documents to the electronic notification (Email) address(es) on the attached “Email Service List” and “Mail Service List.”

On **April 12, 2022**, I caused to be served the following documents:

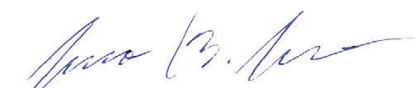
**SIXTY-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH  
HEALTH & SAFETY CODE §25249.7(d);**

**CERTIFICATE OF MERIT; AND**

**CERTIFICATE OF MERIT ATTACHMENTS**

XXXX **By Electronic Upload** by causing true and correct copies of the above documents to be uploaded to the California Attorney General’s website at the web address on the attached “Electronic Upload Service List.”

Executed on **April 12, 2022**, in New Canaan, Connecticut.



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Lorent Guimaraes



# CERTIFICATE OF MERIT

California Health & Safety Code Section 25249.7(d)

I, Clifford A. Chanler, 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 and/or the listed chemical in substantially similar products and exposes individuals through the same potential routes;
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;
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 under Health and Safety Code §25249.7(h)(2) including (i) the identity of the persons consulted with and relied on by the certifier, and (ii) certain facts, studies, or other data reviewed by those persons.

Dated: April 12, 2022



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Clifford A. Chanler

# EMAIL SERVICE LIST

The Honorable Michael Atwell  
Alpine County District Attorney  
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Markleeville, CA 96120  
daoffice@alpinecountyca.gov

The Honorable Todd Riebe  
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## **MAIL SERVICE LIST**

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Manuel Garcia, Jr.  
Head Deputy District Attorney  
County of Los Angeles  
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Los Angeles, CA 90012

## **ELECTRONIC UPLOAD SERVICE LIST**

Office of the California Attorney General  
Proposition 65 Enforcement Reporting  
ATTN: Prop 65 Coordinator  
P.O. Box 70550  
Oakland, CA 94612-0550  
<https://oag.ca.gov/prop65/add-60-day-notice>