

# SIXTY-DAY NOTICE OF VIOLATION

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

**DATE:** November 22, 2023

**TO:** Roger Mezhibovsky, Executive Director – Tops Medical Corp  
California Attorney General's Office  
District Attorneys and Certain City Attorneys Throughout California

**FROM:** Paul Wozniak

My name is Paul Wozniak. 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 consumer 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, Tops Medical Corp, which has acknowledged in writing that it is a person in the course of doing business for purpose of Proposition 65 (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:	Soldering Wire
Listed Chemical:	Lead
Routes of Exposure:	Inhalation, Ingestion and Dermal
Types of Harm:	Cancer, Birth Defects and Other Reproductive Harm

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

Lead-based soldering wire that have caused 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. 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, 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. Additionally, consumers 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/or inhalation. In a separate communication, the Violator has admitted that the Products cause the alleged exposures.

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 shall be submitted/uploaded onto the state Attorney General’s portal as may be required by law.

**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:

*Primary Contact:*

Steven Y. Chen  
Steven Y. Chen, APLC  
2650 River Avenue, Unit A  
Rosemead, California 91770  
Telephone: (626) 782-5017  
schen@schenlaw.com

*Secondary Contact:*

Clifford A. Chanler  
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New Canaan, CT 06840-3801  
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**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.

# 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.

On **November 22, 2023**, 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 Electronic Mail** by sending a true and correct copy of the foregoing documents at the electronic mail address shown below:

Roger Mezhibovsky, Executive Director  
Tops Medical Corp  
371 Hoes Lane STE 200  
Piscataway, NJ 08854  
**topsmedical@gmail.com**

On **November 22, 2023**, 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 addresses on the attached "Email Service List."

On **November 22, 2023**, 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 **November 22, 2023**, in Rosemead, California.



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Steven Chen

# 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 one of the attorneys 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 notice and/or the listed chemical in substantially similar products sold through one or more downstream sellers of the Products including amazon.com;
4. Based on the information obtained through those consultations and 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 citizen’s claims can be established. Further, the Violator has expressly waived any exemptions under California Health & Safety Code §25249.6 *et seq.* and agreed to accept electronic service of this 60-Day Notice of Violation at the email address noted in the Proof of Service above. The Violator further waived any argument that the Products do not expose individuals to lead and that any affirmative defense exists under California Health & Safety Code §25249.10(c);
5. A copy of this Certificate of Merit served on the Attorney General references the factual and legal 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: November 22, 2023



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Clifford A. Chanler

# EMAIL SERVICE LIST

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# **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>