

# 60-Day Notice of Violation

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

**DATE:** September 20, 2011

**TO:** The Day of Games, LLC, through its agent Brent Wagner  
Wayfair, LLC (dba CSN.com), through its agent Niraj Shah  
California Attorney General's Office;  
District Attorney's Office for the 58 Counties of California; and  
The City Attorney's Office for the cities of San Francisco, San Diego, San Jose,  
Sacramento and Los Angeles.

**FROM:** Michael DiPirro

## I. Introduction

My name is Michael DiPirro. I am an environmentalist, and as a citizen of the State of California, I am 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 violators, The Day of Games, LLC, and Wayfair, LLC (the "Violators"). The violations covered by this 60-Day 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:	Alcoholic beverages, when associated with alcohol abuse
Routes of Exposure:	Ingestion
Types of Harm:	Cancer

## II. Nature of Alleged Violation (Product Exposure)

The specific type of product that is causing consumer and occupational exposures in violation of Proposition 65, and that is covered by this Notice, is 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 the "products." The sales of these products in California dating as far back as September 21, 2010, are subject to this Notice. As a result of the sales of these products, exposures to the 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.

California citizens, through the act of buying, acquiring or utilizing the products, are exposed to the listed chemical. Through the normal, foreseeable, and intended use of the products, California citizens are exposed to the listed chemical at a level that far exceeds the minimum exposure rate causing carcinogenicity.

### III. Contact Information

Please direct all questions concerning this 60-Day Notice to me through my counsel's office at the following address:

David R. Bush  
Law Offices of Bush & Chaput  
755 Baywood Drive, 2<sup>nd</sup> Floor  
Petaluma, CA 94954  
Phone: 707-658-4444  
Fax: 707-676-4301

### 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. As required, and to assist the Violators in understanding their violations, I have attached a copy of "Proposition 65: A Summary" which has been prepared by OEHHA.

### V. Resolution of Notice Claims

Based on the allegations set forth in this Notice, I intend to file a citizen enforcement lawsuit against the alleged Violators unless such Violators enters into a binding written agreement to: (1) recall products already sold or undertake best efforts to ensure the requisite health hazard warnings are provided to those who have received such products; (2) provide clear and reasonable warnings for all products sold in the future; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health & Safety Code §25249.7(b). If the alleged Violators is interested in resolving this dispute without resorting to time-consuming and expensive litigation, please feel free to contact my attorneys 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 expires; nor (2) speak for the Attorney General or any District Attorney or City Attorney who receives this 60-Day 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 60-Day Notice. Based on publicly available information, I also provide you with the name(s) of the retailers, distributors and/or manufacturers of the exemplar product within the category or type of product. I believe and allege the sale of the offending product(s) 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 or via a catalog, by the Violators and other distributors and retailers of the manufacturer.

<i>Product*</i>	<i>Retailer(s)</i>	<i>Manufacturer(s)/Distributor(s)</i>
DOG Beer Pong Table (Serial #BP65FTL0007)	CSN.com Sonoma County, CA	The Day of Games, LLC

## VII. Exhibit A

<i>Product Category/Type</i>	<i>Such As*</i>	<i>Toxins</i>
Alcohol drinking games and novelties	DOG Beer Pong Table (Serial #BP65FTL0007)	Alcoholic beverages, when associated with alcohol abuse

\*The specifically identified example of the 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 the alleged Violators is obligated to continue to conduct in good faith an investigation into other specific products within the type of 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 the requisite toxic warnings were and are provided to California citizens prior to purchase.

# Proof of Service

I, Michele Hazlewood, declare under penalty of perjury:

I am a citizen of the United States, over the age of 18 years, not a party to the within action, and my business address is 755 Baywood Drive, 2<sup>nd</sup> Floor, Petaluma, CA, 94954.

On September 20, 2011, I served the following documents:

**60-Day Notice of Violation Sent in Compliance with  
Health & Safety Code §25249.7(d);**

**Proposition 65: A Summary;**

**Certification of Merit; and**

**Certificate of Merit Attachments (served only on the Attorney General)**

on the Violators(s) listed below via First Class Certified Mail through the United States Postal Service by placing a true and correct copy in a sealed envelope, addressed to such Violators and providing each envelope to a United States Postal Service Representative:

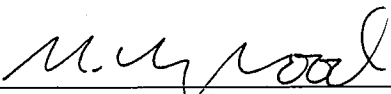
- 1) Brent Wagner, 20 Joliet, Coto De Caza, CA 92679
- 2) Niraj Shah, 177 Huntington Ave., Suite 6000, Boston, MA 02115

I also am providing a copy of the 60-Day Notice and Certificate of Merit to public enforcers by placing a true and correct copy in a sealed envelope, addressed to each party listed below, and served as follows:

<i>Via Express Saver Service by placing such envelope in a Federal Express Drop-Off Box:</i>	The Attorney General of the State of California-This party was also served the Certificate of Merit Attachment.
<i>By placing each envelope in a United States Postal Service mailbox, postage prepaid:</i>	The District Attorney for each of the 58 counties in California; and The City Attorney for: Los Angeles, San Diego, San Jose, San Francisco and Sacramento

*A list of addresses for each of these recipients is attached.*

I swear under penalty of perjury under the laws of the State of California the foregoing is true and correct. Executed on September 20, 2011, at Petaluma, California.

  
Michele Hazlewood

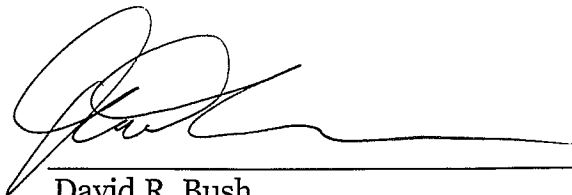
# Certificate of Merit

Health & Safety Code Section §25249.7(d)

I, David R. Bush, hereby declare:

1. This Certificate of Merit accompanies the attached 60-Day Notice in which it is alleged the party identified has violated Health & Safety Code Section §25249.7(d) by failing to provide clear and reasonable warnings to toxic exposures;
2. I am the attorney of record 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 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 the information relied upon provides a credible basis so that all elements of the plaintiff's case can be established. Further, it demonstrates a reasonable belief the alleged Violators will not be able to establish any of the affirmative defenses set forth in the relevant statute;
5. The Certificate of Merit Attachment served on the Attorney General includes 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 person(s) consulted and relied upon by the certifier, and (2) the facts, studies, or other data reviewed).

Dated: September 20, 2011



David R. Bush  
Attorney for Plaintiff Enforcer  
MICHAEL DiPIRRO

**Service List (Page 1 of 4)**

District Attorney, Alameda County  
1225 Fallon Street, Room 900  
Oakland, CA 94612

District Attorney, Alpine County  
P.O. Box 248  
Markleeville, CA 96120

District Attorney, Amador County  
708 Court Street, #202  
Jackson, CA 95642

District Attorney, Butte County  
25 County Center Drive  
Oroville, CA 95965

District Attorney, Calaveras County  
891 Mountain Ranch Road  
San Andreas, CA 95249

District Attorney, Colusa County  
547 Market Street  
Colusa, CA 95932

District Attorney, Contra Costa County  
725 Court Street  
Martinez, CA 94553

District Attorney, Del Norte County  
450 H Street, Ste. 171  
Crescent City, CA 95531

District Attorney, El Dorado County  
515 Main Street  
Placerville, CA 95667

District Attorney, Fresno County  
2220 Tulare Street, #1000  
Fresno, CA 93721

District Attorney, Glenn County  
Post Office Box 430  
Willows, CA 95988

District Attorney, Humboldt County  
825 5th Street  
Eureka, CA 95501

District Attorney, Imperial County  
939 West Main Street  
El Centro, CA 92243

District Attorney, Inyo County  
Post Office Drawer D  
Independence, CA 93526

District Attorney, Kern County  
1215 Truxtun Avenue  
Bakersfield, CA 93301

District Attorney, Kings County  
1400 West Lacey Boulevard  
Hanford, CA 93230

District Attorney, Lake County  
255 N. Forbes Street  
Lakeport, CA 95453

District Attorney, Lassen County  
220 South Lassen Street, Ste. 8  
Susanville, CA 96130

District Attorney, Los Angeles County  
210 West Temple Street, Rm 345  
Los Angeles, CA 90012

District Attorney, Madera County  
209 West Yosemite Avenue  
Madera, CA 93637

**Service List (Page 2 of 4)**

District Attorney, Marin County  
3501 Civic Center, Room 183  
San Rafael, CA 94903

District Attorney, Mariposa County  
Post Office Box 730  
Mariposa, CA 95338

District Attorney, Mendocino County  
Post Office Box 1000  
Ukiah, CA 95482

District Attorney, Merced County  
2222 "M" Street  
Merced, CA 95340

District Attorney, Modoc County  
204 S Court Street  
Alturas, CA 96101-4020

District Attorney, Mono County  
Post Office Box 617  
Bridgeport, CA 93517

District Attorney, Monterey County  
PO Box 1131  
Salinas, CA 93901

District Attorney, Napa County  
931 Parkway Mall  
Napa, CA 94559

District Attorney, Nevada County  
201 Church Street, Suite 8  
Nevada City, CA 95959

District Attorney, Orange County  
401 Civic Center Drive West  
Santa Ana, CA 92701

District Attorney, Placer County  
11562 "B" Avenue, Dewitt Center  
Auburn, CA 95603

District Attorney, Plumas County  
520 Main Street, Room 404  
Quincy, CA 95971

District Attorney, Riverside County  
4075 Main Street, 1st Floor  
Riverside, CA 92501

District Attorney, Sacramento County  
901 "G" Street  
Sacramento, CA 95814

District Attorney, San Benito County  
419 Fourth Street, 2<sup>nd</sup> Floor  
Hollister, CA 95023

District Attorney, San Bernardino County  
316 N. Mountain View Avenue  
San Bernardino, CA 92415-0004

District Attorney, San Diego County  
330 West Broadway, Room 1320  
San Diego, CA 92112

District Attorney, San Francisco County  
850 Bryant Street, Room 325  
San Francisco, CA 94103

District Attorney, San Joaquin County  
Post Office Box 990  
Stockton, CA 95201

District Attorney, San Luis Obispo County  
1050 Monterey Street, Room 450  
San Luis Obispo, CA 93408

**Service List (Page 3 of 4)**

District Attorney, San Mateo County  
400 County Ctr., 3<sup>rd</sup> Floor  
Redwood City, CA 94063

District Attorney, Santa Barbara County  
1105 Santa Barbara Street  
Santa Barbara, CA 93101

District Attorney, Santa Clara County  
70 West Hedding Street  
San Jose, CA 95110

District Attorney, Santa Cruz County  
701 Ocean Street, Room 200  
Santa Cruz, CA 95060

District Attorney, Shasta County  
1525 Court Street, Third Floor  
Redding, CA 96001-1632

District Attorney, Sierra County  
Courthouse, Post Office Box 457  
Downieville, CA 95936

District Attorney, Siskiyou County  
Post Office Box 986  
Yreka, CA 96097

District Attorney, Solano County  
600 Union Avenue  
Fairfield, CA 94533

District Attorney, Sonoma County  
600 Administration Drive, Room 212J  
Santa Rosa, CA 95403

District Attorney, Stanislaus County  
800 11<sup>th</sup> Street, Room 200  
Modesto, CA 95353

District Attorney, Sutter County  
446 Second Street  
Yuba City, CA 95991

District Attorney, Tehama County  
Post Office Box 519  
Red Bluff, CA 96080

District Attorney, Trinity County  
Post Office Box 310  
Weaverville, CA 96093

District Attorney, Tulare County  
221 S. Mooney Avenue, Room 224  
Visalia, CA 93291

District Attorney, Tuolumne County  
2 South Green  
Sonora, CA 95370

District Attorney, Ventura County  
800 South Victoria Avenue  
Ventura, CA 93009

District Attorney, Yolo County  
301 2<sup>nd</sup> Street  
Woodland, CA 95695

District Attorney, Yuba County  
215 Fifth Street  
Marysville, CA 95901



**Service List (Page 4 of 4)**

Los Angeles City Attorney's Office  
Room 1800, City Hall East  
200 North Main Street  
Los Angeles, CA 90012

San Diego City Attorney's Office  
1200 3rd Avenue, 12<sup>th</sup> Floor  
San Diego, CA 92101

San Francisco City Attorney's Office  
City Hall, Room 234  
San Francisco, CA 94102

San Jose City Attorney's Office  
200 East Santa Clara Street  
San Jose, CA 95113

Sacramento City Attorney  
Office of the City Attorney  
P.O. Box 1948  
Sacramento, CA 95812-1948

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Post Office Box 70550  
Oakland, CA 94612-0550