

60-DAY NOTICE OF VIOLATION
California Safe Drinking Water and Toxic Enforcement Act

Date:	October 1, 2015
To:	President – United Brands Inc., dba Whip-It! President – The Mighty Quinn California Attorney General's Office District Attorney's Office for 58 Counties City Attorneys for San Francisco, San Diego, San Jose, Sacramento and Los Angeles
From:	Michael DiPirro

This Notice of Violation is provided to you pursuant to and in compliance with California Health and Safety Code Section 25249.7(d). For general information regarding the California Safe Drinking Water and Toxic Enforcement Act, you may contact the Office of Environmental Health Hazard Assessment's ("OEHHA") Proposition 65 Implementation Office at (916) 445-6900. Attached for your reference is a summary, "Proposition 65 In Plain Language," provided by the California Office of Environmental Health Hazard Assessment's ("OEHHA") (copies not provided to public enforcement agencies).

This Notice of Violation is provided by Michael DiPirro. I am a citizen of the State of California acting in the interest of the general public. I am dedicated to protecting the environment, promoting awareness of exposures to toxic chemicals in products sold in California, improving human health and supporting environmentally sound practices.

Identified below are specific examples of products recently purchased and witnessed as being available for purchase or use in California that are within the categories or types of offending products covered by this Notice. 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 location 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, including, but not limited to the retailer(s) and/or distributor(s) listed below.

Description of Violations:

Violator(s):	United Brands Inc., dba Whip-It!; The Mighty Quinn
Toxic Chemical:	Nitrous Oxide ("N2O") Exposures to N2O occur from use of the products identified in this Notice.
Product Category:	Nitrous Oxide Chargers

Non-exclusive Example of Type of Product¹:	“The Original” Whip-It! Cream Chargers, 8g
Retailer(s):	The Mighty Quinn, Sonoma County, Northern California
Manufacturer(s)/ Distributor(s):	United Brands Inc., dba Whip-It!
Types of Harm:	Birth Defects and Other Reproductive Harm
Description of Exposure:	These exposures occur in homes, workplaces and everywhere else throughout California where these products are handled or used. 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.
Routes of Exposure:	Ingestion, Inhalation Reasonably foreseeable use of the products identified in this Notice results in human exposures to N2O. The routes of exposure for the violations are: (1) direct ingestion and/or inhalation when consumers ingest, inhale or otherwise use the products for their intended and/or unintended but foreseeable use; (2) ingestion via hand to mouth contact after consumers touch, use, or handle the products; (3) ingestion when consumers place their hands in their mouths while using the products; (4) inhalation when N2O from the Products accumulates in ambient airborne particles (e.g., dust) in the air in or around the Products that consumers breathe.
Time Period of Exposure:	The violations have been occurring since at least October 1, 2012, and are continuing to this day.

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; (2) take effective measures to prevent unwarned N2O exposures from products sold in the future and to ensure that the requisite health hazard warnings are provided to those who have received such products; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health and Safety Code Section 25249(b). If the alleged Violator is interested in resolving this dispute without resorting to expensive and time-consuming litigation, please feel free to contact me through my counsel identified below. 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 of Violation. Therefore, while reaching an agreement with me will resolve my claims, such agreement may not satisfy the public prosecutors.

Please direct any inquiries regarding this Notice to Michael DiPirro through his counsel David Bush at The Law Offices of David R. Bush, 755 Baywood Drive, Petaluma, CA 94954; Telephone: (707) 658-4444; E-mail: DRBush@4-20Law.com

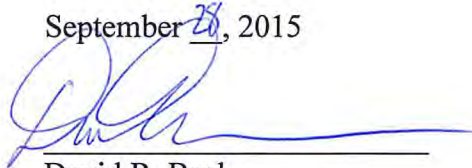
¹ The specifically identified examples of the types of products that are subject to this Notice are for the recipients' benefit to assist in their investigation of, among other things, the magnitude of potential exposure to the listed chemical from other items within the product categories/types listed in Exhibit A. These examples are not meant to be an exhaustive or comprehensive identification of each specific offending product of the types listed under “Product Category.” 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 types or categories described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipients' 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 & Safety Code § 25249.7(d)

I, David R. Bush, 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 & Safety Code § 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney who represents the noticing party.
3. Members of my firm and I have consulted with one or more persons with relevant and appropriate experience or expertise who have 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(s) will be able to establish any of the affirmative defenses set forth in the statute.
5. The copy of the 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 Health & 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.

September 28, 2015



David R. Bush
Attorney for Michael DiPirro

PROOF OF SERVICE

I declare that:

I am employed in Sonoma County, California; my business address is 755 Baywood Drive, Petaluma, CA 94954. I am over the age of 18 years and not a party to the within cause.

On October 1, 2015, I served true copies of the following documents:

60-DAY NOTICE OF VIOLATION OF CALIFORNIA SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT;

PROPOSITION 65 IN PLAIN LANGUAGE (only sent to the Violator(s));

CERTIFICATE OF MERIT; and

CERTIFICATE OF MERIT ATTACHMENTS (SERVED ONLY ON THE ATTORNEY GENERAL)

On this date, I deposited fully prepaid and sealed envelopes containing the above-mentioned documents with the United States Postal Service, addressed to the following individuals as follows:

on the alleged Violator(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 the entities listed below and providing each envelope to a United States Postal Service Representative:

President United Brands Inc. 170 Associated Rd. South San Francisco, CA 94080	President The Mighty Quinn 3372 Santa Rosa Ave. Santa Rosa, CA 95407
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By providing copies to the addressees below electronically as follows:

<i>Electronically via the Attorney General website:</i>		The Attorney General of the State of California;	
<i>Electronically to the following recipients at the following electronic mail addresses:</i>	Birgit Fladager District Attorney Stanislaus County Prop65@standa.org	Assistant District Attorney Santa Clara County epu@da.sccgov.org	Gary Lieberstein District Attorney Napa County CEPD@countyofnapa.org
Dije Ndreu Deputy District Attorney Monterey County Prop65DA@co.monterey.ca.us	Paul E. Zellerbach District Attorney Riverside County Prop65@rivcoda.org	Phillip J. Cline District Attorney Tulare County Prop65@co.tulare.ca.us	Gregory D. Totten District Attorney Ventura County daspecialops@ventura.org

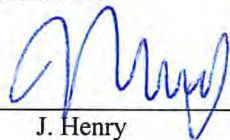
As well as providing copies to the public enforcers by placing a true and correct copy in a sealed envelope, addressed to each party listed below, and served as follows:

By placing each envelope in a United States Postal Service mailbox, postage prepaid:

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.

Executed on October 1, 2015, at Petaluma, California.



 J. Henry

SERVICE LIST

The Honorable Nancy O'Malley
Alameda County District Attorney
1225 Fallon Street, Room 900
Oakland, CA 94612

The Honorable Terese Drabec
Alpine County District Attorney
270 Laramie Street, PO BOX 248
Markleeville, CA 96120

The Honorable Todd Riebe
Amador County District Attorney
708 Court Street
Jackson, CA 95642

The Honorable Michael Ramsey
Butte County District Attorney
25 County Center Drive
Oroville, CA 95965

The Honorable Barbara Yook
Calaveras County District Attorney
891 Mountain Ranch Road
San Andreas, CA 95249

The Honorable John Poyner
Colusa County District Attorney
346 Fifth Street
Colusa, CA 95932

The Honorable Mark Peterson
Contra Costa County District Attorney
900 Ward Street
Martinez, CA 94553

The Honorable Dale Trigg
Del Norte County District Attorney
450 H Street, Room 171
Crescent City, CA 95531

The Honorable Vern Pierson
El Dorado County District Attorney
515 Main Street
Placerville, CA 95667

The Honorable Lisa Smittcamp
Fresno County District Attorney
2220 Tulare Street, #1000
Fresno, CA 93721

The Honorable Dwayne Stewart
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The Honorable Maggie Fleming
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825 5th Street, Fourth Floor
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The Honorable Gilbert Otero
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The Honorable Lisa Green
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Ukiah, CA 95482

The Honorable Larry Morse II
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Merced, CA 95340

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The Honorable Gary Lieberstein
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The Honorable Clifford Newell
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The Honorable David Hollister
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Riverside, CA 92501

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The Honorable Michael Ramos
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San Bernardino, CA 92415-0502

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Santa Cruz County District Attorney
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Trinity County District Attorney
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Visalia, CA 93291-4593

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Ventura County District Attorney
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Ventura, CA 93009

The Honorable Jeff Reisig
Yolo County District Attorney
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Woodland, CA 95695

The Honorable Patrick McGrath
Yuba County District Attorney
215 Fifth Street
Marysville, CA 95901

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200 North Main Street
Los Angeles, CA 90012

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Office of the City Attorney, Sacramento
915 I Street, 4th Floor
Sacramento, CA 95814

The Honorable Jan Goldsmith
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San Diego, CA 92101

The Honorable Dennis Herrera
Office of the City Attorney, San Francisco
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

The Honorable Richard Doyle
Office of the City Attorney, San Jose
200 East Santa Clara Street, 16th Floor
San Jose, CA 95113

Office of the California Attorney General
Proposition 65 Enforcement Reporting
ATTN: Prop 65 Coordinator
1515 Clay Street, Suite 2000
Oakland, CA 94612-0550