

# MYERSBERSTEIN

Business Litigation | Intellectual Property

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June 8, 2016

SIXTY-DAY NOTICE OF INTENT TO SUE FOR VIOLATION OF THE SAFE DRINKING WATER  
AND TOXIC ENFORCEMENT ACT OF 1986  
(*Cal. Health & Safety Code § 25249.5, et seq.*) (“Proposition 65”)

**Re: Violations of Proposition 65 concerning Wiggo Eyes (Angels Craft Item DCS-2225)  
containing Di (2-ethylhexyl) phthalate (“DEHP”)**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

Multicraft Imports, Inc. (“MII”), the noticing entity, located at 201 Innes Park Way, Suite 220, Ottawa, Ontario, K1B 1E3, serves this Notice of Violation (“Notice”) on Mariposa USA, Inc. and Angels Craft, Inc. (“Violator”) pursuant to and in compliance with Proposition 65. Violators may contact MII through its attorney, Timothy A. Schneider, Esq., 4 Executive Circle, Suite 100, Irvine, California 92614, telephone no. (949) 825-5590, facsimile no. (949) 861-6220, and e-mail address [timothy@mybelaw.com](mailto:timothy@mybelaw.com). Please direct all communications regarding this Notice of Violation to Mr. Schneider’s attention at the contact information provided in the preceding sentence. This Notice satisfies a prerequisite for MII to commence an actions against Violator in any Federal or Superior Court of California to enforce Proposition 65. The violations addressed by this Notice occurred at numerous locations in each county in California as reflected in the District Attorney address listed in the attached distribution list. MII is serving this Notice upon each person or entity responsible for the alleged violations, the California Attorney General, the District Attorney for each county where alleged violations occurred, and the City Attorney for each city with a population (according to the most recent decennial census) of over 750,000 located within counties where the alleged violations occurred.

- MII is a corporation doing business in California, and is in the business of craft supplies. However, by sending this Notice, MII is acting “in the public interest” pursuant to Proposition 65.
- This Notice concerns violations of the warning prong of Proposition 65, which states that “[n]o 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 clear and reasonable warning to such individual...” *Cal. Health & Safety Code § 25249.6*.

The **Wiggo Eyes** contain **Di (2-ethylhexyl) phthalate (“DEHP”)**, which is a chemical known to the State of California to cause both cancer and reproductive toxicity, developmental, male. On January 1, 1988, the Governor of California added **DEHP** to the list of chemicals known to the State to cause cancer, and on October 24, 2003, to the list of chemicals known to cause developmental male reproductive toxicity. Both additions took place more than twenty (20) months before MII served this Notice.

- This Notice addresses consumer products exposures. A “[c]onsumer products exposure’ is an exposure which results from a person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service.” *Cal. Code Regs.* tit. 27, § 25602(b).

Violator caused consumer product exposures in violation of Proposition 65 by producing or making available for distribution or sale in California to consumers **Wiggo Eyes**. The packaging contains no Proposition 65-compliant warning. Nor did Violators, with regard to the **Wiggo Eyes**, provide a system of signs, public advertising identifying the system and toll-free information services, or any other system, which provided clear and reasonable warnings. Nor did Violators, with regard to the **Wiggo Eyes**, provide identification of the product at retail outlets in a manner that provided a warning through shelf labeling, signs, menus, or a combination thereof.

Violator did not provide any Proposition 65-compliant warnings on the product or on any of its components; neither did Violator provide within the workplace any sign or system of signs compliant with Proposition 65.


These violations occurred, to the best of MII’s knowledge, at least as early as March 2016, and are ever continuing thereafter.

The principal routes of exposure were through inhalation, oral ingestion, including hand to mouth pathways, and trans-dermal absorption. Persons sustain exposures by handling the **Wiggo Eyes** without wearing gloves or by touching bare skin or mucous membranes with gloves after handling the **Wiggo Eyes**, as well as hand to mouth contact, hand to mucous membranes, or breathing in particulate matter emanating from the **Wiggo Eyes** during use. Additionally, Children and infants may be exposed by touching the **Wiggo Eyes** and putting their hands in their mouths. Violators did not provide any Proposition 65-compliant warnings on any of the products or any substance present or any sign or system of signs within the workplace either.

Proposition 65 requires that notice of intent to sue be given to the violator(s) sixty (60) days before the suit is filed. *Cal. Health & Safety* § 252549.7(d)(1). With this letter MII gives notice of the alleged violations to Violator and the appropriate governmental authorities. In absence of any action by the appropriate governmental authorities within sixty (60) calendar days of the sending of this Notice, MII may file suit. See *Cal. Code Civ. Proc.* § 1013; *Cal. Health & Safety Code* § 25249.7(d)(1); and *Cal. Code Regs.* Tit. 27, § 25903(d)(1). MII is ready and willing to discuss the possibility of resolving its grievances in the public interest short of formal litigation.

Dated: June 8, 2016

**MYERS BERSTEIN LLP**

  
Timothy A. Schneider

Attachments:

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to MARIPOSA USA, INC. and ANGELS CRAFT, INC. and their Registered Agents for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to Attorney General only)

**CERTIFICATE OF MERIT**


**Re: Violations of Proposition 65 concerning Wiggo Eyes (Angels Craft Item DCS-2225) containing Di (2-ethylhexyl) phthalate (“DEHP”)**

I, Timothy A. Schneider, declare:

1. This Certificate of Merit accompanies the attached sixty (60) day notice in which it is alleged that the party identified in the notice violated California Health & Safety Code § 25249.5, *et seq.* 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 or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the notice.
4. Based on the information obtained through those consultants, 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.

Dated: June 8, 2016

**MYERS BERSTEIN LLP**

  
Timothy A. Schneider

**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am employed in the County of Orange, State of California. I am over the age of 18 and am not a party to the entitled action. My business address is 4 Executive Circle, Suite 100, Irvine, California 92614.

On June 8, 2016, I caused the foregoing document(s) described as: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE § 25249.5, ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65) A SUMMARY**, to be served on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the parties listed below and depositing it in the U.S. Postal Service with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
MARIPOSA USA, INC.  
4659 Maywood Avenue  
Vernon, California 90058

Sang Gyu Park  
(MARIPOSA USA, INC’s Registered Agent  
for Service of Process)  
4659 Maywood Avenue  
Vernon, California 90058

Current President or CEO  
ANGELS CRAFT, INC.  
4659 Maywood Avenue  
Vernon, California 90058


Charles Kim  
(ANGELS CRAFT, INC’s Registered Agent  
for service of Process)  
4659 Maywood Avenue  
Vernon, California 90058

On June 8, 2016, I caused the foregoing document(s) described as: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE § 25249.5, ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT**, to be served on the following party by uploading a true and correct copy thereof on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/propr65/add-60-day-notice>:

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

On June 8, 2016, I caused the foregoing document(s) described as: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE § 25249.5, ET SEQ.; CERTIFICATE OF MERIT**, to be served on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to the parties listed below and depositing it in the U.S. Postal Service with the postage fully prepaid for delivery by Priority Mail.

Executed on June 8, 2016 at Irvine, California.

  
Timothy A. Schneider

**SERVICE LIST**

District Attorney, Los Angeles County  
210 West Temple Street, Suite 18000  
Los Angeles, California 90012

Los Angeles City Attorney's Office  
City Hall East  
200 North Main Street, Suite 800  
Los Angeles, California 90012

27 CCR Appendix A  
Appendix A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as “Proposition 65”). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. Please refer to the statute and OEHHA's implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

*WHAT DOES PROPOSITION 65 REQUIRE?*

***The “Proposition 65 List.”*** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

***Clear and reasonable warnings.*** A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly say that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

***Prohibition from discharges into drinking water.*** A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

#### ***DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?***

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

***Grace Periods.*** Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

***Governmental agencies and public water utilities.*** All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

***Businesses with nine or fewer employees.*** Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

***Exposures that pose no significant risk of cancer.*** For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific “No Significant Risk Levels” (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

**Exposures that will produce no observable reproductive effect at 1,000 times the level in question.** For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level” divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

**Exposures to Naturally Occurring Chemicals in Food.** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

**Discharges that do not result in a “significant amount” of the listed chemical entering any source of drinking water.** The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” level for chemicals that cause cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

#### **HOW IS PROPOSITION 65 ENFORCED?**

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.



A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off- premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties any reimbursement for costs and attorney's fees, if the notice was served on or after October 5, 2013, and the alleged violator has done *all* of the following within 14 days of being served notice:

- Corrected the alleged violation;
- Agreed to pay a civil penalty of \$5B500 (subject to change as noted below) to the private party within 30 days; and
- Notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private-party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of

the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city of greater than 750,000 population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private-party.

A copy of the notice of special compliance procedure and proof of compliance form is included with this notice and can be downloaded from OEHHA's website at: <http://oehha.ca.gov/prop65/law/p65law72003.html>. The notice is reproduced here:

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Date:

Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

### **SPECIAL COMPLIANCE PROCEDURE PROOF OF COMPLIANCE**

You are receiving this form because the Noticing Party listed above has alleged that you are violating California Health and Safety Code §25249.6 (Prop. 65).

**The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:**

- 1. You have actually taken the corrective steps that you have certified in this form**
- 2. The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice**
- 3. The Noticing Party receives the required \$500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.**
- 4. This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.**

**PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY**

The alleged violation is for an exposure to: (check one)

\_\_\_Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.

\_\_\_A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination.

\_\_\_Environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises.

\_\_\_Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

**IMPORTANT NOTES:**

1. You have no potential liability under California Health and Safety Code §25249.6 if your business has nine (9) or fewer employees.
2. Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.

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Date :

Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

**PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE**

## Certification of Compliance

Accurate completion of this form will demonstrate that you are now in compliance with California Health and Safety Code §25249.6 for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):

- hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the g a copy of that warning and a photograph accurately showing its placement on my premises;
- Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately its placement on my premises; OR
- Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

## Certification

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

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Signature of alleged violator or authorized representative Date

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Name and title of signatory

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS. . .*

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at [P65Public.Comments@oehha.ca.gov](mailto:P65Public.Comments@oehha.ca.gov).

Revised: May 2014

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<sup>1</sup> All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

<sup>2</sup> See Section 25501(a)(4).

Note: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

## **HISTORY**

1. New Appendix A filed 4-22-97; operative 4-22-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 17).

2. Amendment filed 1-7-2003; operative 2-6-2003 (Register 2003, No. 2).

3. Change without regulatory effect renumbering title 22, section 12903 and Appendix A to title 27, section 25903 and Appendix A, including amendment of appendix, filed 6-18-2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 25).

4. Amendment filed 11-19-2012; operative 12-19-2012 (Register 2012, No. 47).

5. Amendment of appendix and Note filed 11-19-2014; operative 1-1-2015 (Register 2014, No. 47).

This database is current through 5/6/16 Register 2016, No. 19  
27 CCR Appendix A, 27 CA ADC Appendix A

**ADDITIONAL SUPPOTING INFORMATION FOR CERTIFICATE OF MERIT**

[See attached pages]