

SCHWARTZ LAW, P.C.

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June 23, 2016

NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 *ET SEQ.* (PROPOSITION 65)

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

Schwartz Law represents the Center for Advanced Public Awareness, Inc. (“CAPA”), 180 Promenade Circle, Suite 300, Sacramento, CA 95834; CAPA is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, fostering and increasing the public awareness of chemicals used to manufacture consumer products, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

CAPA has identified violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the product(s) identified below. These violations have occurred and continue to occur because the Alleged Violator identified below failed to provide required clear and reasonable warnings with these products. Section 25249.6 of the statute provides 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 providing a clear and reasonable warning to such individual ...” Without proper warnings regarding the toxic effects of exposures to this listed chemical that results from contact with this product, California citizens lack the information necessary to make an informed decision on whether and/or how to eliminate (or reduce) their risk of exposure to the listed chemical from the reasonably foreseeable use of the product.

This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Health and Safety Code Section 25249.7(d), CAPA intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

Certificate of Merit and General Information about Proposition 65. Pursuant to Title 11 C.C.R. § 3100, a certificate of merit is attached hereto. Pursuant to Title 27, C.C.R. §25903(b), a copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with this letter served to the alleged Violator identified below.

Notice of Violation of California Health & Safety Code §25249.5 *et seq.*

Alleged Violator. The name of the company covered by this notice that violated Proposition 65 (hereinafter the “Violator”) is:

Michaels Stores, Inc.

Consumer Products and Listed Chemical. The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

**Imagin8 Vinyl Purple Purse - Di(2-ethylhexyl) phthalate (“DEHP”)
UPC: 886946896088**

On January 1, 1988, the State of California listed DEHP as a chemical known to the State to cause cancer. On October 24, 2003, the State of California listed Di(2-ethylhexyl) phthalate (DEHP) as a chemical known to cause developmental male reproductive toxicity. Both additions took place more than twenty (20) months before CAPA served this Notice.

Violations. The alleged Violators knowingly and intentionally have exposed and continue to knowingly and intentionally expose consumers within the State of California to Di(2-ethylhexyl) phthalate (DEHP) at levels that, upon reasonable use of the product, exceed the No Significant Risk Level and the Maximum Allowable Dose Level without providing clear and reasonable warning of this exposure. In particular, the product does not warn that it contains chemicals known to the State of California to cause both cancer and reproductive toxicity, developmental, male.

Route of Exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of the product. Consequently, a primary route of exposure to these chemicals is through dermal exposure. Consumers 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. The potential exists for dermal exposure of DEHP through direct contact with the user’s bare hands or other body parts when the tote bag is manipulated or contacted. Moreover, with children, mouthing of the product is a distinct possibility; and certainly some amount of exposure through ingestion can occur by touching the product with subsequent touching of the user’s hand to mouth. By way of example, consumers and 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 contact with the products stops. If the tote bag is stored in a closed drawer with other materials DEHP that leaches from tote bag may contaminate other articles that may be ingested. More likely, the product may be used to carry items and materials that commonly come into contact with the mouth.

Examples include, but are not limited to, use of DEHP contaminated baby bottles and other beverage containers, and infant toys, that are placed in the mouth, and DEHP contaminated food products that are ingested, or DEHP contaminated napkins that are used to clean the user's mouth.

Approximate Time Period of Violations. Ongoing violations have occurred every day since a currently-unknown date but no later than April 23, 2016, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to this chemical.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, CAPA is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) 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; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 for products sold in the future or reformulate such products to eliminate further DEHP exposures. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time consuming litigation.

CAPA has retained Schwartz Law as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated herein.**

Sincerely,

SCHWARTZ LAW, P.C.



Jeffrey M. Schwartz

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Michaels Stores, Inc.)

Additional Supporting Information for Certificate of Merit (to AG only)

Notice of Violation of California Health & Safety Code §25249.5 *et seq.*

CERTIFICATE OF MERIT

Re: CAPA's Notice of Proposition 65 Violations by Michaels Stores, Inc.

I, Jeffrey M. Schwartz, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the party identified in the notice violated California Health & Safety Code Section 25249.6 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 chemical that is 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.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California 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.

Dated: June 23, 2016


Jeffrey M. Schwartz

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 a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 647 Camino de los Mares, Suite 225, San Clemente, CA 92673. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at San Clemente, California.

On June 23, 2016, I served the following documents: **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”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Mr. Carl S. Rubin, CEO
Michaels Stores, Inc.
8000 Bent Branch Dr.
Irving, TX 75063

Agent for Service of Process:
CSC - Lawyers Incorporating Service
2710 Gateway Oaks Dr. Ste 150N
Sacramento, CA 95833

On June 23, 2016, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice>:

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

On June 23, 2016, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to the party listed below:

Stacey Grassini, Deputy District Attorney
Contra Costa County
900 Ward Street
Martinez, CA 94553
sgrassini@contracostada.org

Gary Lieberstein, District Attorney
Napa County
931 Parkway Mall
Napa, CA 94559
CEPD@countyofnapa.org

Michelle Latimer, Program Coordinator
Lassen County
220 S. Lassen Street
Susanville, CA 96130
mlatimer@co.lassen.ca.us

Paul E. Zellerbach, District Attorney
Riverside County
3960 Orange Street
Riverside, CA 92501
Prop65@rivcoda.org

Dije Ndreu, Deputy District Attorney
Monterey County
1200 Aguajito Road
Monterey, CA 93940
Prop65DA@co.monterey.ca.us

Anne Marie Schubert, District Attorney
Sacramento County
901 G Street
Sacramento, CA 95814
Prop65@sacda.org

Gregory Alker, Assistant District Attorney
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732 Brannan Street
San Francisco, CA 94103
gregory.alker@sfgov.org

Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

Yen Dang, Supervising Deputy District Attorney
Santa Clara County
70 W Hedding St
San Jose, CA 95110
EPU@da.sccgov.org

Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

Stephan R. Passalacqua, District Attorney
Sonoma County
600 Administration Dr
Sonoma, CA 95403
jbarnes@sonoma-county.org

Jeff W. Reisig, District Attorney
Yolo County
301 Second Street
Woodland, CA 95695
cfepd@yolocounty.org

On June 23, 2016, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** 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 each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by US First Class Mail.

Executed on June 23, 2016, in San Clemente, California.


Jeffrey M. Schwartz

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

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

District Attorney, Santa Barbara County
1112 Santa Barbara Street
Santa Barbara, CA 93101

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

District Attorney, Marin County
3501 Civic Center Drive, Room 130
San Rafael, CA 94903

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

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

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

District Attorney, Shasta County
1355 West Street
Redding, CA 96001

District Attorney, Butte County
25 County Center Drive, Suite 245
Oroville, CA 95965

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

District Attorney, Sierra County
PO Box 457
Downieville, CA 95936

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

District Attorney, Merced County
550 W. Main Street
Merced, CA 95340

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

District Attorney, Colusa County
346 Fifth Street Suite 101
Colusa, CA 95932

District Attorney, Modoc County
204 S Court Street, Room 202
Alturas, CA 96101-4020

District Attorney, Solano County
675 Texas Street, Ste 4500
Fairfield, CA 9453

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

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

District Attorney, Stanislaus County
832 12th Street, Ste 300
Modesto, CA 95354

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

District Attorney, Nevada County
201 Commercial Street
Nevada City, CA 95959

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

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

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

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

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

District Attorney, Placer County
10810 Justice Center Drive, Ste 240
Roseville, CA 95678

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

District Attorney, Humboldt County
825 5th Street 4th Floor
Eureka, CA 95501

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

District Attorney, Tuolumne County
423 N. Washington Street
Sonora, CA 95370

District Attorney, Imperial County
940 West Main Street, Ste 102
El Centro, CA 92243

District Attorney, San Benito County
419 Fourth Street, 2nd Floor
Hollister, CA 95023

District Attorney, Yuba County
215 Fifth Street, Suite 152
Marysville, CA 95901

District Attorney, Inyo County
230 W. Line Street
Bishop, CA 93514

District Attorney, San Bernardino County
303 West 3rd Street, 6th Floor
San Bernardino, CA 92415-0502

Los Angeles City Attorney's Office
City Hall East
200 N. Main Street, Suite 800
Los Angeles, CA 90012

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

District Attorney, San Diego County
330 West Broadway, Suite 1300
San Diego, CA 92101

San Diego City Attorney's Office
1200 3rd Avenue, Ste 1620
San Diego, CA 92101

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

District Attorney, San Joaquin County
222 E. Weber Ave. Rm. 202
Stockton, CA 95202

San Francisco, City Attorney City
Hall, 234
1 Dr. Carlton B Goodlett Pl
San Francisco, CA 94102

Notice of Violation of California Health & Safety Code §25249.5 *et seq.*

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

District Attorney, San Luis Obispo
County
1035 Palm St, Room 450
San Luis Obispo, CA 93408

San Jose City Attorney's Office
200 East Santa Clara Street, 16th
Floor
San Jose, CA 95113

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

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

Sacramento City Attorney's Office
915 I Street, 4th Floor
Sacramento, CA 95814