

# 60-DAY NOTICE OF VIOLATION

## California Safe Drinking Water and Toxic Enforcement Act

<b>Date:</b>	April 20, 2017
<b>To:</b>	Owner – Mr. Nice Guy 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
<b>From:</b>	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, "Appendix A: The Safe Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary," 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/or 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:

<b>Violators:</b>	Mr. Nice Guy
<b>Toxic Chemical:</b>	Marijuana Smoke Exposures to Marijuana Smoke occur from use of the products identified in this Notice.
<b>Product Categories:</b>	Marijuana Intended for Smoking; Paraphernalia for Smoking Marijuana

<b>Non-exclusive Example of Type of Product<sup>1</sup>:</b>	Marijuana “bud” intended for smoking; Water Bonges; Smoking Pipes; Rolling Papers; Blunts
<b>Retailer(s)/Distributor(s)/Manufacturer(s)</b>	Mr. Nice Guy
<b>Types of Harm:</b>	Cancer
<b>Description of Exposure:</b>	These exposures occur in homes, some 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.
<b>Routes of Exposure:</b>	Inhalation Reasonably foreseeable use of the products identified in this Notice results in human exposures to Marijuana Smoke. Marijuana Smoke is a direct and unavoidable by-product of the use of the Products listed above. The route of exposure for the violations is inhalation when the consumer inhales Marijuana Smoke as a result of using the Products listed above.
<b>Time Period of Exposure:</b>	The violations have been occurring since at least April 20, 2014, 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 Marijuana Smoke 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 or Jennifer Henry at Bush & Henry, Attorneys at Law, PC, 3270 Mendocino Ave. Suite 2E, Santa Rosa, CA 95403; Telephone: (707) 541-6255; E-mail: DRBush@BushAndHenry.com, JHenry@BushAndHenry.com.**

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<sup>1</sup> 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 exposures to the listed chemical from other items within the product categories/types listed herein. 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, Jennifer Henry, 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.

April 20, 2017

  
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Jennifer Henry  
Attorneys for Michael DiPirro

**PROOF OF SERVICE**

I declare that:

I am employed in Sonoma County, California; my business address is 3270 Mendocino Avenue, # 2E, Santa Rosa, CA 95403. I am over the age of 18 years and not a party to the within cause.

On April 20, 2017, I served true copies of the following documents:

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

**APPENDIX A: THE SAFE WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY; OEHHA/CAL EPA (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 regular and 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:

Owner Mr. Nice Guy 1126 South Los Angeles Street #B Los Angeles, CA 90015	
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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>	Stacey Grassini Deputy District Attorney Contra Costa County <a href="mailto:sgrassini@contracostada.org">sgrassini@contracostada.org</a>	Yen Deng Supervising Deputy District Attorney Santa Clara County <a href="mailto:epu@da.sccgov.org">epu@da.sccgov.org</a>	Gary Lieberstein District Attorney Napa County <a href="mailto:CEPD@countyofnapa.org">CEPD@countyofnapa.org</a>	Jeff W. Reisig District Attorney Yolo County <a href="mailto:cfepd@yolocounty.org">cfepd@yolocounty.org</a>
Dije Ndreu Deputy District Attorney Monterey County <a href="mailto:Prop65DA@co.monterey.ca.us">Prop65DA@co.monterey.ca.us</a>	Paul E. Zellerbach District Attorney Riverside County <a href="mailto:Prop65@rivcoda.org">Prop65@rivcoda.org</a>	Phillip J. Cline District Attorney Tulare County <a href="mailto:Prop65@co.tulare.ca.us">Prop65@co.tulare.ca.us</a>	Gregory D. Totten District Attorney Ventura County <a href="mailto:daspecialops@ventura.org">daspecialops@ventura.org</a>	Anne Marie Schubert District Attorney Sacramento County <a href="mailto:Prop65@sacda.org">Prop65@sacda.org</a>
Gregory Alker Assistant District Attorney San Francisco City/County <a href="mailto:Gregory.alker@sfgov.org">Gregory.alker@sfgov.org</a>	Eric J. Dobroth Deputy District Attorney San Luis Obispo County <a href="mailto:edobroth@co.slo.ca.us">edobroth@co.slo.ca.us</a>	Stephan R. Passalacqua District Attorney Sonoma County <a href="mailto:jbarnes@sonoma-county.org">jbarnes@sonoma-county.org</a>	Michelle Latimer Program Coordinator Lassen County <a href="mailto:mlatimer@co.lassen.ca.us">mlatimer@co.lassen.ca.us</a>	Tori Verber Salazar District Attorney San Joaquin County <a href="mailto:DACConsumer.Environmental@sjcda.org">DACConsumer.Environmental@sjcda.org</a>

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 April 20, 2017, at Santa Rosa, California.

  
 \_\_\_\_\_  
 M. Madden

# 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  
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The Honorable Mark Peterson  
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The Honorable Keith Fagundas  
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The Honorable Donald Anderson  
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Lassen County District Attorney  
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San Francisco, CA 94102

The Honorable Richard Doyle  
Office of the City Attorney, San Jose  
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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