

**60-DAY NOTICE OF VIOLATION  
OF CALIFORNIA HEALTH & SAFETY CODE § 25249.7(d)  
(PROPOSITION 65)**

Date: July 27, 2018

To: Plow & Hearth, LLC  
Evergreen Enterprises, Inc.  
Wayfair Inc.  
California Attorney General's Office;  
District Attorney's Office for 58 Counties; and  
City Attorneys for San Francisco, San Diego, San Jose, Sacramento & Los Angeles

From: The Center for Advanced Public Awareness, Inc.

**I. INTRODUCTION**

The Center for Advanced Public Awareness, Inc. ("CAPA") is a California non-profit organization acting in the interest of the general public, pursuant to California Health & Safety Code § 25249.7(d). CAPA seeks to further: the protection of the environment; the reduction or elimination of toxic chemicals used in the manufacture of consumer products; the improvement of human health, through increased public awareness of toxic chemicals; a reduction in the use and misuse of hazardous chemicals; and the promotion of environmentally sound practices and corporate responsibility.

This 60-Day Notice of Violation ("Notice") is provided by CAPA who identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Cal. Health & Safety Code § 25249.5 *et seq.* ("Proposition 65" or the "Act"), with respect to the product listed below, based on a failure to provide a clear and reasonable health hazard warning in connection with the sale or use of the product in the State of California. This Notice is being provided to the alleged violators, Plow & Hearth, LLC, Evergreen Enterprises, Inc., and Wayfair Inc. ("Violators" or "Notice Recipients"), as well as the California Attorney General's Office, The District Attorney's Office for 58 Counties, and the City Attorneys for San Francisco, San Diego, San Jose, Sacramento and Los Angeles.

The Notice Recipients are hereby given notice that they violated and continue to violate Proposition 65 with respect to the warning requirement, located at section 25249.6 of California's Health & Safety Code, which states, "No person in the course of doing business shall knowingly and intentionally expose an individual to a chemical known to the State to cause cancer without first giving a clear and reasonable warning to such individual." Without proper warnings regarding the toxic effects of exposures to a listed chemical, consumers and citizens in California lack the information necessary to make an informed decision as to whether or how to eliminate or reduce their risk of exposure from the reasonably foreseeable use of products containing the listed chemical.

Pursuant to Health & Safety Code § 25249.7(d), CAPA intends to file a private enforcement action in the public interest sixty (60) days after effective service of this Notice, unless the



appropriate public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

## **II. NATURE OF ALLEGED VIOLATIONS**

**Consumer Product.** The specific type or category of products ("Product") that are the subject of this Notice are as follows:

Product(s)	Category/Type	Retailer	Manufacturer/Distributor
Plow & Hearth Gift Wrap Organizer, SKU # PLHE3840, Model # 56283	Gift Wrap Organizer with vinyl/ PVC components	Wayfair.com	Plow & Hearth, LLC

Identified above is a specific example of a Product recently purchased and witnessed as being available for sale or use in the State of California, within the category of offending products covered by the Notice. The retailers, manufacturers and/or distributors listed above are based on publicly available information.

The Product is identified for the Notice Recipients' benefit to assist in their investigation into the alleged violations that are the subject of this Notice. The exemplar Product is not intended to be an exhaustive list of all such products potentially in violation of Proposition 65. It is CAPA's position that the Notice Recipients are obligated to conduct, in good faith, an investigation into other specific products, within the category or type identified above, that may have been manufactured, imported, sold or distributed for sale, or otherwise have been in the Notice Recipients' custody or control during the relevant period, identified below, so as to ensure that the requisite health hazard warnings are provided to consumers in California prior to purchase.

**Listed Chemical and Route of Exposure.** The chemical that is the subject of this Notice is Diisononyl phthalate ("DINP"). On December 20, 2013, the State of California listed DINP as a chemical known to cause cancer. The consumer exposures that are the subject of this Notice result from the purchase, acquisition and handling of the Products containing DINP, in accordance with the Product's intended use. The primary routes of exposure are dermal absorption, caused by both direct and indirect hand-to-mouth and object-to-mouth ingestion, and oral ingestion. Consumers and other individuals are exposed to the listed chemical when they handle, touch or otherwise use the Plow & Hearth Gift Wrap Organizer.

**Violations and Time Period of Exposure.** The Notice Recipients knowingly and intentionally exposed, and continue to knowingly and intentionally expose, consumers within the State of California to DINP, a chemical known to the State to cause cancer, without first giving a "clear and reasonable" health hazard warning of the exposure to such individuals, as required by Proposition 65. Specifically, the alleged Violators failed to provide clear and reasonable warnings to consumers that the Products can expose users to DINP.

Exposures caused by the use of the Products have occurred each day since the products were introduced into the California marketplace, but, at a minimum, since July 27, 2018, and, potentially, as far back as July 27, 2016. Moreover, these exposures will continue until clear and reasonable warnings are provided to product purchasers and users or until this known toxic



chemical is either removed from the Product or reduced to allowable levels in the Product. Without proper warnings regarding the toxic effects of exposures 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 listed chemical from the reasonably foreseeable use of the Products.

### **III. RESOLUTION OF NOTICED CLAIMS**

Consistent with the public interest goals of Proposition 65, CAPA is interested in pursuing a constructive resolution to this matter to have the ongoing violations of California law quickly rectified. To that end, based on the allegations set forth in this Notice, CAPA intends to file a citizen enforcement lawsuit, as provided for in the Act, against the Notice Recipients for their alleged violations, unless the Violators agree, in an enforceable written instrument, to: (1) recall the listed Products; (2) reformulate the Products to reduce/eliminate further exposures to DINP; (3) provide clear and reasonable health hazard warnings compliant with Proposition 65 for Products sold in the future; and (4) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as costly and time-consuming litigation.

It should be noted that neither CAPA nor their counsel can: (1) finalize any settlement until after the expiration of the 60-day Notice period, and, only then, if no public prosecutor has commenced and is diligently prosecuting the alleged violations; or (2) speak for the Attorney General or any District or City attorney who is in receipt of this Notice. Therefore, while reaching an agreement with CAPA will satisfy CAPA's claims, the agreement may not satisfy any public prosecutors.

### **IV. GENERAL INFORMATION AND SUMMARY OF PROPOSITION 65**

A copy of a summary of Proposition 65's provisions, prepared by the Office of Environmental Health Hazard Assessment ("OEHHA") is enclosed with the copy of the Notice served on the alleged Violators for their reference. For further general information concerning Proposition 65, contact OEHHA's Proposition 65 Implementation Office at (916) 445-6900.

### **V. CERTIFICATE OF MERIT**

Pursuant to Health & Safety Code § 25249.7(d) and Title 11, C.C.R. §3100, a Certificate of Merit is attached hereto. A copy of the Notice and Certificate of Merit is served on the Attorney General and marked "Attorney General Copy: Contains Official Information Pursuant to Evidence Code Section 1040" with all supporting documentation, as required by Section 3102, attached thereto.

### **VI. CONTACT INFORMATION**

CAPA retained Kimberly Gates as legal counsel in connection with this matter. To the extent you are interested in discussing potential resolution, please direct all questions, issues or communications regarding this 60-Day Notice of Violation to CAPA's counsel at the following address:



Center for Advanced Public Awareness  
c/o Kimberly Gates  
Gates Johnson Law  
2822 Moraga Street  
San Francisco, California 94122  
Telephone: (628) 219-7750

*Attachments: Certificate of Merit; Proof of Service; The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary (to Violators only); and Additional Confidential Supporting Information for Certificate of Merit (to AG only.)*



**CERTIFICATE OF MERIT**  
*Health and Safety Code Section 25249.7(d)*

**Re: Center for Advanced Public Awareness, Inc.'s Notice of Proposition 65 Violations**

1, Kimberly Gates, hereby declare and certify:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties 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 and have assembled evidence attached to the copy for the California Attorney General as Exhibit 1 to this Certificate of Merit regarding the lack of warnings for the listed chemical that is the subject of the notice.
4. Based on the information obtained 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. The copy of this 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 California Health & Safety Code § 25249.7(h)(2) (i.e. the identity of the persons consulted with and relied on by the certifier and the facts, studies and data reviewed by that person.)

Dated July 27, 2018.



\_\_\_\_\_  
Kimberly Gates



**PROOF OF SERVICE**

I, the undersigned, declare under penalty of perjury:

I am over the age of 18 years of age and not a party to this case. I am a resident of or employed in the county where the mailing occurred. My business address is 2822 Moraga Street, San Francisco, CA 94122.

On July 27, 2018, I caused to be served the following:

**60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH  
HEALTH & SAFETY CODE § 25249.7(d);**

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

**CERTIFICATE OF MERIT; AND**

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

on the alleged violators and at the address(es) listed below, by placing a true and correct copy in a sealed envelope, addressed to the entities below and providing such envelope to a United States Postal Representative for First Class Certified Mail to:

Richard Koval, VP  
Plow & Hearth, LLC  
7021 Wolfstown Hood Rd.  
Madison, VA 22727

John Toler, President  
Evergreen Enterprises, Inc.  
5915 Midlothian Tpke.  
Richmond, VA 23225

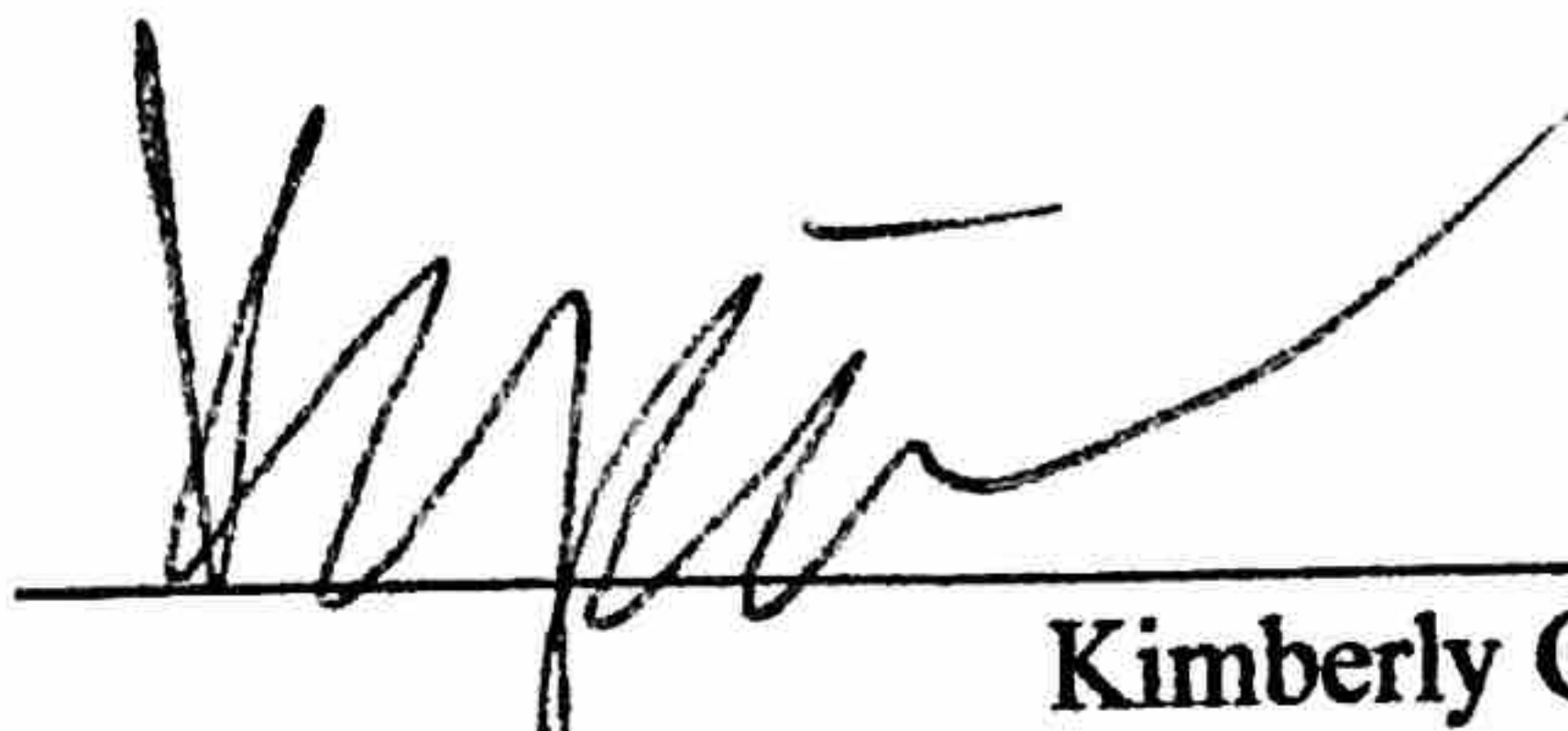
Niraj Shah, CEO  
Wayfair Inc.  
4 Copley Place, Suite 700  
Boston, MA 02116

as well as by providing copies of the above documents, uploaded electronically, to the public enforcers according to directions from their respective offices, and/or by placing a true and correct copy in a sealed envelope, addressed to each of the following parties:

Electronically uploaded to The Attorney General of the State of California via the Attorney General's website; and

By placing a true and correct copy of the above-listed documents in a sealed envelope, with postage fully paid with the United States Postal Service and addressed and mailed to the parties listed on the attached Service List.

Executed on July 27, 2018, at San Francisco, California.

  
\_\_\_\_\_  
Kimberly Gates



## SERVICE LIST

<p>The Honorable Michael Atwell Alpine County District Attorney P.O. Box 248 Markleeville, CA 96120</p>	<p>The Honorable Jackie Lacey Los Angeles County District Attorney 211 West Temple Street, Ste 1200 Los Angeles, CA, 90012</p>	<p>The Honorable Todd Riebe Amador County District Attorney 708 Court Street, #202 Jackson, CA 95642</p>
<p>The Honorable Michael Ramsey Butte County District Attorney 25 County Center Drive, Suite 245 Oroville, CA 95965</p>	<p>The Honorable Barbar Yook Calaveras County District Attorney 891 Mountain Ranch Road San Andreas, CA 95249</p>	<p>The Honorable Matthew R. Beauchamp Colusa County District Attorney 346 5th Street, Suite 101 Colusa, CA 95932</p>
<p>Del Norte County District Attorney 450 H street, Room 171 Crescent City, CA 95531</p>	<p>The Honorable Vern Pierson El Dorado County District Attorney 515 Main Street Placerville, CA 95667</p>	<p>The Honorable Lisa Smittcamp Fresno County District Attorney 2220 Tulare street, Suite 1000 Fresno, CA 93721</p>
<p>The Honorable Dwayne Stewart Glenn County District Attorney P.O. Box 430 Willows CA 95988</p>	<p>The Honorable Maggie Fleming Humboldt County District Attorney 525 5<sup>th</sup> street, 4<sup>th</sup> Floor Eureka, CA 95501</p>	<p>The Honorable Gilbert Otero Imperial County District Attorney 940 West Main Street, Suite 102 El Centro, CA 92243</p>
<p>The Honorable Thomas Hardy Inyo County District Attorney 230 W. Line Street Bisho , CA 93514</p>	<p>The Honorable Lisa Green Kern County District Attorney 1215 Truxtun Avenue Bakersfield, CA 93301</p>	<p>The Honorable Keith Fagundes Kings County District Attorney 1400 West Lacey Blvd. Hanford, CA 93230</p>
<p>The Honorable Donald Anderson Lake County District Attorney 255 N. Forbes Street Lakeport, CA 95453</p>	<p>The Honorable David Linn Madera County District Attorney 209 West Yosemite Avenue Madera, CA 93637</p>	<p>The Honorable Edward Berberian Marin County District Attorney 3501 Civic Center Drive, Room 130 San Rafael, CA 94903</p>
<p>The Honorable Thomas Cooke Mariposa County District Attorney P.O. Box 730 Mariposa, CA 95338</p>	<p>The Honorable C. David Eyster Mendocino County District Attorney P.O. Box 1000 Ukiah, CA 9548</p>	<p>The Honorable Larry Morse II Merced County District Attorney 550 West Main Street Merced, CA 95340</p>
<p>The Honorable Jordan Funk Modoc County District Attorney 204 S. Court Street Room 202 Alturas, CA 96101</p>	<p>The Honorable Tim Kendall Mono County District Attorney P.O. Box 2053 Mammoth Lakes, CA 93546</p>	<p>The Honorable Clifford Newell Nevada County District Attorney 201 Commercial Street Nevada City, CA 95959</p>
<p>The Honorable Tony Rackaukas Orange County District Attorney 401 Civic Center Drive West Santa Ana, CA 92701</p>	<p>The Honorable R. Scott Owens Placer County District Attorney 10810 Justice Center Drive Roseville, CA 95678</p>	<p>The Honorable David Hollister Plumas County District Attorney 520 Main Street, Room 404 Quincy, CA 95971</p>
<p>The Honorable Candace Hooper San Benito District Attorney 419 4th Street Hollister, CA 95023</p>	<p>The Honorable Michael Ramos San Bernardino County District Attorney 303 W. Third Street San Bernardino, CA 92415</p>	<p>The Honorable Summer Stephan San Diego County District Attorney 330 W. Broadway Street San Diego, CA 92101</p>
<p>The Honorable Stephen Wagstaffe San Mateo County District Attorney 400 County Center, Third Floor Redwood City, CA 94063</p>	<p>The Honorable Stephanie Bridgett Shasta County District Attorney 1355 West Street Redding, CA 96001</p>	<p>The Honorable Lawrence Allen Sierra County District Attorney 100 Courthouse Square Downieville, CA 95936</p>
<p>The Honorable James Kirk Andrus Siskiyou County District Attorney P.O. Box 986 Redding, CA 96097</p>	<p>The Honorable Krishna Abrams Solano County District Attorney 675 Texas Street, Suite 4500 Fairfield, CA 94533</p>	<p>The Honorable Birgit Fladager Stanislaus County District Attorney 832 12th street, Suite 300 Modesto, CA 95353</p>
<p>The Honorable Amanda Hopper Sutter County District Attorney 446 Second Street, Suite 102 Yuba City, CA 95991</p>	<p>The Honorable Gregg Cohen Tehama County District Attorney P.O. Box 519 Red Bluff, CA 96080</p>	<p>The Honorable Eric Heryford Trinity County District Attorney P.O. Box 310 Weaverville, CA 96093</p>
<p>The Honorable Laura Krieg Tuolumne County District Attorney 423 N. Washington Street Sonora, CA 95370</p>	<p>The Honorable Patrick McGrath Yuba County District Attorney 215 Fifth street, Suite 152 Marysville, CA 95901</p>	<p>The Honorable James Sanchez Office of the City Attorney, Sacramento 915 I Street, 4<sup>th</sup> Floor Sacramento, CA 95814</p>



<p>The Honorable Mike Feuer Office of the City Attorney, Los Angeles Kames K. Hahn Hall East 200 North Main Street, 8<sup>th</sup> Floor Los Angeles, CA 90012</p>	<p>The Honorable Dennis Herrera Office of the City Attorney, San Francisco City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102</p>	<p>The Honorable Richard Doyle Office of the City Attorney, San Jose 200 East Santa Clara Street, 16<sup>th</sup> Floor San Jose, CA 95113</p>
--	--	--

### ELECTRONIC MAIL SERVICE LIST

<p>Nancy O'Malley, District Attorney Alameda County District Attorney 7776 Oakport Street, Suite 650 Oakland, CA 94621 CEPDProp65@acgiv.org</p>	<p>Paul E. Zellerbach, District Attorney Riverside County 3072 Orange Street Riverside, CA Prop65@rivcoda.org</p>	<p>Phillip J. Cline, District Attorney Tulare County 221 S Mooney Blvd Visalia, CA 95370 Prop65@co.tulare.ca.us</p>
<p>Gary Liebrestein, District Attorney Napa County 931 Parkway Mall Napa, CA CEPD@countyofnapa.org</p>	<p>Tori Verber Salzar, District Attorney San Joaquin County 222 E. Weber Avenue, Room 202 Stockton, CA DAConsumer.Environmental@sjcda.org</p>	<p>Stephan Passalacqua, District Attorney Sonoma County 600 Administration Drive Sonoma, CA 95403 jbarnes@sonoma-county.org</p>
<p>Gregory Alker, Assistant District Atty San Francisco County 732 Brannan Street San Francisco, CA 94103 Gregory.alker@sfgov.org</p>	<p>Jeffrey S. Rosell, District Attorney Santa Cruz County 701 Ocean Street Santa Cruz, CA 95060 Prop65DA@santacruzcounty.us</p>	<p>Dije Ndreu, Deputy District Attorney Monterey County 1200 Aguajito Road Monterey, CA 93940 Prop65DA@monterey.ca.us</p>
<p>Yen Dang, Supervising Deputy District Attorney Santa Clara County 70 W Hedding Street San Jose, CA 95110 EPU@da.sccgov.org</p>	<p>Jeff W. Reising, District Attorney Yolo County 301 Second Street Woodland, CA 95695 cfepd@yolocounty.org</p>	<p>Mark Ankcorn, Deputy City Attorney City of San Diego 1200 Third Avenue San Diego, CA 92101 CityAttyProp65@sandiego.gov</p>
<p>Gregory D. Totten, District Attorney Ventura County 800 S Victoria Avenue Ventura, CA 93009 daspecialops@ventura.org</p>	<p>Michelle Latimer, Program Coordinator Lassen County 220 S. Lassen Street Susanville, CA 96130 mlatimer@co.lassen.ca.us</p>	<p>Christopher Dalbey, Deputy District Attorney Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101 DAProp65@co.santa-barbara.ca.us</p>
<p>Stacey Grassini, Deputy District Attorney Contra Costa County 900 Ward Street Martinez, CA 94553 sgrassini@contracosta.org</p>	<p>Eric J. Dobroth, Deputy District Attorney San Luis Obispo County County Govt Center Annex, 4<sup>th</sup> Floor San Luis Obispo, CA 93408 edobroth@co.slo.ca.us</p>	<p>Anne Marie Schubert, District Attorney Sacramento County 901 G Street Sacramento, CA 95814 Prop65@sacda.org</p>

### ELECTRONIC UPLOAD SERVICE LIST

<p>Office of the California Attorney General Proposition 65 Enforcement Reporting ATTN: Prop 65 Coordinator P.O. Box 70550 Oakland, CA 94612-0550 <a href="https://oag.ca.gov/prop65/add-60-day-notice">https://oag.ca.gov/prop65/add-60-day-notice</a></p>
---