

LAW OFFICES OF BRIAN GAFFNEY, A Professional Corporation
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August 30, 2021

Notice of Violations
Safe Drinking Water and Toxic Enforcement Act

By Certified Mail, Return Receipt Requested to Violators in U.S.A.
By Registered Mail to Violators Located Outside U.S.A.
By First Class U.S. Mail to Public Enforcement Agencies

Dear Public Enforcement Agencies / Violators:

This office and Ecological Rights Foundation (“ERF”) gives you notice that, since at least August 30, 2018 the businesses listed on Attachment A and Attachment A have been, and continue to be, in violation of California Health & Safety Code §25249.6. ERF is a California non-profit corporation dedicated to protecting human and environmental health, including raising awareness of, and reducing exposures to, toxic chemicals.

ERF intends to bring an enforcement action 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify the violations discussed in this notice letter. The public enforcement agencies that have been served with copies of this notice of violations are identified on the attached Certificate of Service.

The above referenced violations occur when California residents use 3D pens utilizing filaments incorporating a styrene monomer, including acrylonitrile-butadiene-styrene (ABS) filaments, polycarbonate ABS (PC-ABS) filaments, and high impact polystyrene (HIPS) filaments. Use of 3D pens with the above identified filaments expose people to styrene, a chemical known to the State of California to cause cancer. 3D pens sold by the businesses listed on **Attachment A - 3D Pen Violators** expose consumers and workers to styrene via inhalation.

Examples of particular 3D Pens manufactured, sold, distributed and/or marketed by the violators are attached as **Attachment B - 3D Pens**. All of the 3D Pens at issue in this notice can be used with filaments incorporating a styrene monomer, including acrylonitrile-butadiene-styrene (ABS) filaments, polycarbonate ABS (PC-ABS) filaments, and high impact polystyrene (HIPS) filaments. When people use these 3D pens, the above filaments are heated by the 3D pens and thus release styrene into the air. People using 3D pens utilizing filaments incorporating a styrene monomer, and others in the same room where such 3D pens are being used, inhale styrene in the normal course of use.

In addition, exposures in the environmental context occur in the homes, businesses, schools and public locations where the people use either 3D pens utilizing filaments incorporating a styrene monomer. Exposures to styrene occur within the consumer and environmental contexts.

The businesses listed on **Attachment A - 3D Pen Violators** did not and do not provide clear and reasonable warnings to people who use 3D pens utilizing filaments incorporating a styrene monomer, that use of these products will expose them to chemicals known to cause cancer. The above violations have occurred every day since at least August 30, 2018, and will continue every day until clear and reasonable warnings are given.

The businesses listed on Attachment A - 3D Pen Violators - are responsible for providing the warnings required by Section 25249.6 of the Act for consumer product exposures to people who use 3D pens capable of utilizing filaments incorporating a styrene monomer as the 3D Pen Violators are selling these 3D pens under a brand or trademark that is owned or licensed by the 3D Pen Violators or an affiliated entity; the 3D Pen Violators have actual knowledge of the potential consumer product exposure requiring the warning; there is no manufacturer, producer, packager, importer, supplier, or distributor of the 3D pens who is a “person in the course of doing business” under Section 25249.11(b) of the Act and has designated an agent for service of process in California or has a place of business in California.

Attachment B – 3D Pens is a non-exclusive list of examples of these types of products. Though specific models or product numbers are given as examples, this Notice also pertains to all models and all variations of 3D Pens utilizing filaments incorporating a styrene monomer sold in California. Attachment B is for the recipient’s benefit and is not meant to be an exhaustive or comprehensive identification of each specific offending product. It is ERF’s position that the alleged Violators are obligated to conduct a good faith investigation into other specific products within the identified category or type that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipient's custody or control) during the past three years, to ensure that clear and reasonable warnings are provided to California citizens prior to purchase, or retroactively if necessary.

These violations and threatened violations will continue to occur everyday until these businesses either provide clear and reasonable warnings, reformulate their 3D pens so as not to use filaments incorporating a styrene monomer, or stop selling these 3D pens in California. These violations occur in all of California’s 58 counties, both on and off of these businesses’ properties.

In keeping with its public interest mission and to expeditiously rectify these ongoing violations of California law, ERF is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation.

The following individual is the responsible individual within ERF for purposes of this Notice:
Fredric Evenson
Ecological Rights Foundation
P.O. Box 1000
Santa Cruz, California 95061
Telephone: (831) 454-8216
Email: evenson@ecologylaw.com

ERF has retained the following counsel to represent it in this matter. **Please direct communications to counsel.**

Brian Gaffney
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(650) 219 3187
brian@gaffneylegal.com

Resolution of Noticed Claims:

ERF is interested in seeking a constructive resolution of this matter that advances the public interest without engaging in costly and protracted litigation. ERF is willing to settle this matter to the extent legally possible prior to the commencement of any enforcement action. Settlement terms would require that the unwarned exposures described in this Notice of Violation be stopped. That would require at least the following: 1) a potential recall of products already sold; 2) that either warnings be given to all future purchasers in California of the products subject to this Notice, that the products be reformulated to eliminate the exposures described in the Notice, or that you stop marketing, distributing or selling the products in California; 3) that you locate and provide a warning compliant with 27 Cal. Code Regs Section 25601 to each person who has been subject to the unwarned exposures described in the Notice to the extent those exposures are caused by products that were sold in California during the past three years; and 4) that you pay an appropriate civil penalty based on the factors enumerated in California Health and Safety Code Section 25249(b). It should be noted that ERF cannot finalize any settlement of this matter until 70 days have elapsed since the sending of the Notice and unless no public enforcer has begun an enforcement action concerning the violations described in the Notice. Any settlement on behalf of the public interest must be approved by the California Superior Court on noticed motion with 45 days' notice to the California Attorney General. The Attorney General may appear at any approval hearing and oppose a settlement if he or she believes the proposed settlement is not in the public interest. If you wish to discuss settlement of this matter before ERF files suit, please promptly contact ERF's counsel.

Sincerely,
/s/Brian Gaffney
Brian Gaffney

Enclosure to Violators "The Safe Drinking Water and Toxic Enforcement Act of 1986: A Summary." A Certificate of Merit is also attached.

Attachment A – 3D Pen Violators

Walmart Inc.

Attachment B – 3D Pens

<u>Proposition 65 Violators -3D Pens</u>	<u>Examples of Products Manufactured, Sold, Distributed and/or Marketed</u>
Walmart Inc.	ALLCACA 3D Pen (UPC 191557337609)
Walmart Inc.	ANSELF 3D Pen (UPC 791327910096)
Walmart Inc.	Basstop 3D Pen (UPC 780682499650) Walmart #574335594;Manufacturer Part ID: BIPP3D
Walmart Inc.	Bisontec 3D Pen (UPC 661094592897)
Walmart Inc.	Galaxy Wireless 3D Pen (SKU 2802680492917)
Walmart Inc.	General 3D Pen (UPC 191557337562)
Walmart Inc.	HC-TOP 3D Pen (UPC 940214354356)
Walmart Inc.	HOTBEST 3D Pen (UPC 605750409624)
Walmart Inc.	IKEEP1 3D Pen (SKU: CK000 AD010101 3388049)
Walmart Inc.	mascarry 3D Pen (UPC 780682513721) (SKU: SYXQ410AB)
Walmart Inc.	METERK 3D Pen (UPC 791351247434) (SKU "TLUSE3974-FBA(E3974US)*150 B07DC25SHK)
Walmart Inc.	Myriann 3D Pen (UPC 762409324193)
Walmart Inc.	ODOMY 3D Pen (UPC 605750518241)
Walmart Inc.	SelfNew 3D Pen (UPC 600358556114)
Walmart Inc.	VicTsing 3D Pen (UPC 796826609717)
Walmart Inc.	V.I.P. 3D Pen 3D Pen 3D Drawing Printing Printer Pen with Free Filament Refills (SKU: CK000 AD010101 3388049)
Walmart Inc.	V.I.P. 3D Pen 3D Pen 3D Drawing Printing Printer Pen with Free Filament Refills (SKU: CK000 AD010101 3388049)
Walmart Inc.	WODSTYLE 3D Pen (SKU: FH030210101 PAO200721228)

Certificate of Merit - Health & Safety Code Section 25249.7(d)

I, Brian Gaffney, hereby declare:

(1) This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the parties identified in the notices have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.

(2) I am the attorney for the noticing party.

(3) I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the subject of the 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 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 Health and Safety Code section 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.

Date: August 30, 2021

By:
/S/Brian Gaffney
Brian Gaffney

CERTIFICATE OF SERVICE

I, Brian Gaffney, declare:

If so called, I could and would testify as follows: I am over eighteen. My business address is 446 Old County Road, Suite 100-310, Pacifica, CA 94044.

On August 30, 2021, I caused the attached

(1) Notice of Violations: California Safe Drinking Water and Toxic Enforcement Act, (2) Certificate of Merit: Health and Safety Code Section 25249.7(d), (3) Appendix A: The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary, (4) Certificate of Service to be served by CERTIFIED MAIL to each private business entity listed on the attached SERVICE LIST-Noticed Parties, except for each private business located outside of the U.S.A. which are served by REGISTERED MAIL. I deposited copies of these documents in envelopes, postage pre-paid, with the U.S. Postal Service on the day on which the mail is collected.

In addition, on the same date and I caused the attached

(1) Notice of Violations: California Safe Drinking Water and Toxic Enforcement Act, (2) Certificate of Merit: Health and Safety Code Section 25249.7(d), (3) Certificate of Merit (Attorney General Copy): Factual information sufficient to establish the basis of the Certificate of Merit (only sent to the Attorney General), (4) Certificate of Service by FIRST CLASS U.S. MAIL on those public enforcement agencies listed on the attached SERVICE LIST-Public Enforcers. I deposited copies of these documents in envelopes, postage pre-paid, with the U.S. Postal Service on the day on which the mail is collected, and

by sending portable document format (PDF) files of the same to the electronic mail addresses to each of the public prosecutors identified by the California Attorney General as having authorized electronic service of notices. These public enforcement agencies appear on the attached Service List with their electronic mail addresses.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on August 30, 2021, at Pacifica, California.

/S/Brian Gaffney
Brian Gaffney

SERVICE LIST-Public Enforcers

Alameda District Attorney
7776 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

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

Amador County District Attorney
708 Court Street, #202
Jackson, CA 95642

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

Calaveras District Attorney
891 Mountain Ranch Rd.
San Andreas, CA 95249
Prop65Env@co.calaveras.ca.us

Colusa County District Attorney
346 5th Street, Suite 101
Colusa, CA 95932

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

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

El Dorado County District Attorney
778 Pacific Street
Placerville, CA 95667

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

Glenn County District Attorney
P.O. Box 430
Willows, CA 95988

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

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

Inyo District Attorney
168 North Edwards Street
Independence, CA 93526
inyoda@inyocounty.us

Kern County District Attorney
1215 Truxtun Avenue
Bakersfield, CA 93301

Kings County District Attorney
1400 West Lacey Blvd.
Hanford, CA 93230

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

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

Los Angeles County District Attorney
211 W. Temple Street, Suite 1200
Los Angeles, CA 90012

City Attorney
City of Los Angeles
200 N. Main Street, Suite 800
Los Angeles, CA 90012

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

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

Mariposa District Attorney
P.O. Box 730
Mariposa, CA 95338
mcda@mariposacounty.org

Mendocino County District Attorney
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Ukiah, CA 95482

Merced District Attorney
550 West Main Street
Merced, CA 95340
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Modoc County District Attorney
204 S. Court Street Room 202
Alturas, CA 96101

Mono County District Attorney
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Bridgeport, CA 93517

Monterey District Attorney
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Nevada District Attorney
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Nevada City, CA 95959
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Orange County District Attorney
401 Civic Center Drive West
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Oakland City Attorney
City Hall, 6th Floor
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Oakland, California 94612

Placer District Attorney
10810 Justice Center Drive
Roseville, CA 95678
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Plumas District Attorney
520 Main St.
Quincy, CA 95971
davidhollister@countyofplumas.com

Riverside District Attorney
3072 Orange Street
Riverside, CA 92501
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901 G Street
Sacramento, CA 95814
Prop65@sacda.org

Sacramento City Attorney
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Sacramento, CA 95814

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419 4th Street
Hollister, CA 95023

San Bernardino Co. District Attorney
303 W. Third Street
San Bernardino, CA 92415

San Diego District Attorney
330 West Broadway
San Diego, CA 92101
SanDiegoDAProp65@sdcca.org

San Diego Deputy City Attorney
1200 Third Avenue
San Diego, CA 92101
CityAttyProp65@sandiego.gov

San Francisco Deputy City Attorney
1390 Market Street, 7th Floor
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Valerie.Lopez@sfcityatty.org

San Francisco Assistant District Attorney
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alethea.sargent@sfgov.org

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222 E. Weber Avenue, Room 202
Stockton, CA 95202
DAConsumer.Environmental@sjcda.org

San Luis Obispo Deputy District Attorney
County Government Center Annex, 4th Floor
San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

San Mateo County District Attorney
400 County Center, Third Floor
Redwood City, CA 94063

San Jose City Attorney
200 E. Santa Clara Street, 16th Floor
San Jose, CA 96113
Proposition65notices@sanjoseca.gov

Santa Barbara Deputy District Attorney
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DAProp65@co.santa-barbara.ca.us

Santa Clara Supervising Deputy District Attorney
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EPU@da.sccgov.org

Santa Cruz District Attorney
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Prop65DA@santacruzcounty.us

Shasta County District Attorney
1355 West Street
Redding, CA 96001

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Downieville, CA 95936

Siskiyou County District Attorney
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Yreka, CA 96097

Solano County District Attorney
675 Texas Street, Suite 4500
Fairfield, CA 94533

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

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

Sutter County District Attorney
446 Second Street, Suite 102
Yuba City, CA 95991

Tehama County District Attorney
P.O. Box 519
Red Bluff, CA 96080

Trinity County District Attorney
P.O. Box 310
Weaverville, CA 96093

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

Ventura District Attorney
800 S Victoria Ave
Ventura, CA 93009
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Yolo District Attorney
301 Second Street
Woodland, CA 95695
cfepd@yolocounty.org

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

California Attorney General
<https://oag.ca.gov/prop65/add-60-day-notice>

Service List – Noticed Violators

Walmart Inc.
ATTN: President/CEO
702 SW 8th Street
Bentonville, AR 72716