

## SUPPLEMENTAL 60-DAY NOTICE OF VIOLATION

California Safe Drinking Water and Toxic Enforcement Act

<b>Date:</b>	April 21, 2022
<b>To:</b>	<b>Viking Range, LLC</b> through Kevin Brown, Pres. and The Corporation Trust Company, Registered Agent <b>The Middleby Corporation</b> through Timothy J. Fitzgerald and The Corporation Trust Company, Registered Agent 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(s) 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>Violator(s):</b>	<b>Viking Range, LLC</b> through Kevin Brown, Pres. and The Corporation Trust Company, Registered Agent <b>The Middleby Corporation</b> through Timothy J. Fitzgerald and The Corporation Trust Company, Registered Agent
<b>Toxic Chemicals:</b>	Diisononyl Phthalate (DINP)
<b>Product Category:</b>	Grill covers

<b>Non-exclusive Example of Type of Product<sup>1</sup>:</b>	500 Series Vinyl Cover for 30" Built-in Grill
<b>Retailer(s):</b>	Viking Range, LLC (www.viking-cooking-school.myshopify.com; On-line purchase)
<b>Manufacturer(s)/ Distributor(s):</b>	Viking Range, LLC
<b>Types of Harm:</b>	Cancer
<b>Description of Exposure:</b>	These exposures occur in homes, schools, 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>	Dermal; Hand-to-mouth Reasonably foreseeable use of the products identified in this Notice of Violation results in human exposures to DINP. The Products contain DINP. The route of exposure for the violations is dermal absorption directly through the skin, when consumers touch, use, or handle the products in ways that are intended and/or foreseeable, as well as hand-to-mouth exposure following dermal contact.
<b>Time Period of Exposure:</b>	The violations have been occurring as far back as February 20, 2019, and are continuing to this day.

**Resolution of Noticed Claims:** Based on the allegations set forth in this Notice of Violation, 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 DEHP 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 of Violation to Michael DiPirro through his counsel:**

**Jeremy Fietz at Jeremy Fietz, Attorney-at-Law** 1510 Fourth Street, Santa Rosa CA 95404

Telephone: (707) 236--0088; E-mail: Jeremy@superawesomelawyer.com; or

**David Bush at Law Office of David R. Bush** 321 South Main Street #502, Sebastopol, CA 95472

Telephone: (707) 321-5028; E-mail: drbush@drbushlaw.com

<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(s) are 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, David R. Bush, hereby declare:

1. This Certificate of Merit accompanies the attached Supplemental 60-Day Notice of Violation in which it is alleged that the parties identified in the Notice of Violation have 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 exposures to the listed chemical that are 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 voluntary information requested by the Attorney General's office as well as mandatory 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.

May 9, 2022



David R. Bush

Attorney for Michael DiPirro

## PROOF OF SERVICE

I declare that:

I am employed in Sonoma County, California; my business address is 321 South Main Street #502, Sebastopol CA 95472.

I am over the age of 18 years and not a party to the within cause.

On May 10, 2022, I served true copies of the following documents:

**SUPPLEMENTAL 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 the alleged Violator(s) listed below via regular and First Class Certified Mail 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:

Viking Range, LLC  
111 W. Front Street  
Greenwood, MS 38930

The Middleby Corporation  
1400 Toastmaster Drive  
Elgin, IL 60120

The Corporation Trust Company  
Corporation Trust Center  
1209 Orange Street  
Wilmington, DE 19801

● And by providing copies to the addressees below electronically as follows:

<u>Electronically via the Attorney General website:</u> The Attorney General of the State of California	<u>Electronically to the following recipients at the following electronic mail addresses:</u>	Yen Deng Supervising Deputy District Attorney Santa Clara County <a href="mailto:epu@da.sccgov.org">epu@da.sccgov.org</a>	Jeffrey S. Rosell District Attorney Santa Cruz County <a href="mailto:Prop65DA@santacruzcounty.us">Prop65DA@santacruzcounty.us</a>	Christopher Dalbey Deputy District Attorney Santa Barbara County <a href="mailto:DAProp65@co.santa-barbara.ca.us">DAProp65@co.santa-barbara.ca.us</a>
Dije Ndreu Deputy District Attorney Monterey County <a href="mailto:Prop65DA@co.monterey.ca.us">Prop65DA@co.monterey.ca.us</a>	Phillip J. Cline District Attorney Tulare County <a href="mailto:Prop65@co.tulare.ca.us">Prop65@co.tulare.ca.us</a>	Anne Marie Schubert District Attorney Sacramento County <a href="mailto:Prop65@sacda.org">Prop65@sacda.org</a>	Gregory D. Totten District Attorney Ventura County <a href="mailto:daspecialops@ventura.org">daspecialops@ventura.org</a>	District Attorney Sonoma County <a href="mailto:jbarnes@sonoma-county.org">jbarnes@sonoma-county.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>	Gary Lieberstein District Attorney Napa County <a href="mailto:CEPD@countyofnapa.org">CEPD@countyofnapa.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:DAConsumer.Environmental@sjcda.org">DAConsumer.Environmental@sjcda.org</a>
Paul E. Zellerbach District Attorney Riverside County <a href="mailto:Prop65@rivcoda.org">Prop65@rivcoda.org</a>	Jeff W. Reisig District Attorney Yolo County <a href="mailto:cfepd@yolocounty.org">cfepd@yolocounty.org</a>		Stacey Grassini Deputy District Attorney Contra Costa County <a href="mailto:sgrassini@contracostada.org">sgrassini@contracostada.org</a>	Kathryn L. Turner Chief Deputy City Attorney San Diego County <a href="mailto:CityAttyCrimProp65@sandiego.gov">CityAttyCrimProp65@sandiego.gov</a>

● As well as by sending hard copies by placing each envelope in a United States Postal Service mailbox, postage prepaid to The District Attorney for Each of the 58 counties in California (other than those listed for e-service); and The City Attorney for Los Angeles, San Diego, San Jose, San Francisco, and Sacramento.

I swear under penalty of perjury under the law of the State of California the foregoing is true and correct. Executed on May 10, 2022, at Sebastopol, California.



David Bush