

60-DAY NOTICE OF VIOLATION
California Safe Drinking Water and Toxic Enforcement Act

Date:	05/28/24
To:	Whitney Museum of American Art 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
From:	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:

Violator(s):	Whitney Museum of American Art
Toxic Chemicals:	Di(2-ethylhexyl) Phthalate [DEHP]
Product Category:	Upcycled Banner Pouches
Non-exclusive Example of Type of Product¹:	Upcycled Whitney Banner Pouch
Retailer(s):	Whitney Museum of American Art [www.whitney.org]
Manufacturer(s)/Distributor(s):	Whitney Museum of American Art

¹ 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.

Types of Harm:	Cancer and birth defects or other reproductive harm
Description of Exposure:	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.
Routes of Exposure:	Dermal; Hand-to-mouth Testing has revealed that the Products contain Di(2-ethylhexyl) Phthalate. Reasonably foreseeable use of the products identified in this Notice of Violation results in human exposures to Di(2-ethylhexyl) Phthalate. 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.
Time Period of Exposure:	The violations have been occurring as far back as 05/29/21 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 chemical 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.

Proposition 65 Citizen Enforcer: Michael DiPirro, 1680 Golden Gate Avenue, #4, San Francisco, CA 94115 ph. (415) 858-9249

****Please direct any inquiries regarding this Notice of Violation to Michael DiPirro through his counsel:**

Jeremy Fietz at Jeremy Fietz, Attorney-at-Law, 4241 Montgomery Drive, #123, Santa Rosa CA 95405
Telephone: (707) 236-0888; 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

CERTIFICATE OF MERIT
Health & Safety Code § 25249.7(d)

I, David R. Bush, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-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.

05/28/24



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 the date executed below, 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 the alleged Violator(s) listed below via First Class Certified Mail by placing a true and correct copy in a sealed envelope addressed to the entities listed below and by dropping each envelope in an official receptacle of the United States Post Office located in Sebastopol, CA:

Whitney Museum of American Art
c/o Nicholas S. Holmes, General Counsel
99 Gansevoort Street, New York, NY, 10014

Whitney Museum of American Art
c/o Whitney Museum of American Art as agent for
service
945 Madison Ave, ATT: Administrator, New York,
NY 10021

And by providing electronic copies to the addressees listed on the following page, as well as by sending hard copies to the District Attorney for each of the remaining counties and The City Attorney for Los Angeles, San Jose, and Sacramento.

I swear under penalty of perjury under the law of the State of California the foregoing is true and correct. Executed on 05/28/24, at Sebastopol, California.



David Bush

Public Agency E-mail Service List

The Attorney General of the State of California: Electronic upload via the Attorney General website

Alameda County-Nancy O'Malley , District Attorney: CEPDProp65@acgov.org

Calaveras County-Barbara Yook, District Attorney: Prop65Env@co.calaveras.ca.us

Contra Costa County- Stacey Grassini, Deputy District Attorney: sgrassini@contracostada.org

Fresno County-Lisa A. Smittcamp-District Attorney: consumerprotection@fresnocountyca.gov

Inyo County-Thomas Hardy, District Attorney: inyoda@inyocounty.us

Lassen County-Michelle Latimer, program Coordinator: mlatimer@co.lassen.ca.us

Mariposa County-Walter Wall, District Attorney: mcda@mariposacounty.org

Merced County-Kimberly Lewis, District Attorney: Prop65@countyofmerced.com

Monterey County-Janine M. Pacioni, District Attorney: Prop65DA@co.monterey.ca.us

Napa County-Allison Haley, District Attorney: CEPD@countyofnapa.org

Nevada County-Clifford H. Newell, District Attorney: DA.Prop65@co.nevada.ca.us

Placer County-Morgan Briggs Gire, District Attorney: prop65@placer.ca.gov

Plumas County-David Hollister, District Attorney: davidhollister@countyofplumas.com

Riverside County-Paul E. Zellerbach, District Attorney: Prop65@rivcoda.org

Sacramento County-Anne Schubert, District Attorney: Prop65@sacda.org

San Diego County-Summer Stephan, District Attorney: SanDiegoDAProp65@sdacda.org

San Diego City-Mark Ankcorn, Deputy City Attorney: CityAttyProp65@sandiego.gov

San Francisco County-Alexandra Grayner, Asst. District Attorney: alexandra.grayner@sfgov.org

San Francisco City-Valerie Lopez, Deputy City Attorney: Starla.Sousa@sfcityatty.org

San Joaquin County-Tori Verber Salazar, District Attorney: DAConsumer.Environmental@sjcda.org

San Luis Obispo County-Eric Dobroth, Deputy District Attorney: edobroth@co.slo.ca.us

Santa Barbara County-Christopher Dalbey, Deputy District Attorney: DAProp65@co.santa-barbara.ca.us

Santa Clara County-Bud Porter, Deputy District Attorney: EPU@da.sccgov.org

Santa Clara City-Nora Frimann, City Attorney: Proposition65notices@sanjoseca.gov

Santa Cruz County-Jeffrey Rosell, District Attorney: Prop65DA@santacruzcounty.us

Sonoma County-Jill Ravitch, District Attorney: Jeannie.Barnes@sonoma-county.org

Tulare County-Phillip J. Cline, District Attorney: Prop65@co.tulare.ca.us

Ventura County-Gregory Trotten, District Attorney: daspecialops@ventura.org

Yolo County-Jeff W. Reisig, District Attorney: cfepd@yolocounty.org

Public Agency USPS Mail Service List

District Attorney, Alpine County
Attn: Prop. 65 Enforcement
P.O. Box 248
Markleeville, CA 96120

District Attorney, Amador County
Attn: Prop. 65 Enforcement
708 Court Street, #202
Jackson, CA 95642

District Attorney, Butte County
Attn: Prop. 65 Enforcement
25 County Center Drive
Oroville, CA 95965

District Attorney, Colusa County
Attn: Prop. 65 Enforcement
547 Market Street
Colusa, CA 95932

District Attorney, Del Norte County
Attn: Prop. 65 Enforcement
450 H Street, Ste. 171
Crescent City, CA 95531

District Attorney, El Dorado County
Attn: Prop. 65 Enforcement
515 Main Street
Placerville, CA 95667

District Attorney, Glenn County
Attn: Prop. 65 Enforcement
Post Office Box 430
Willows, CA 95988

District Attorney, Humboldt County
Attn: Prop. 65 Enforcement
825 5th Street
Eureka, CA 95501

District Attorney, Imperial County
Attn: Prop. 65 Enforcement
939 West Main Street
El Centro, CA 92243

District Attorney, Kern County
Attn: Prop. 65 Enforcement
1215 Truxtun Avenue
Bakersfield, CA 93301

District Attorney, Mono County
Attn: Prop. 65 Enforcement
Post Office Box 617
Bridgeport, CA 93517

District Attorney, Orange County
Attn: Prop. 65 Enforcement
401 Civic Center Drive West
Santa Ana, CA 92701

District Attorney, San Benito County
Attn: Prop. 65 Enforcement
419 Fourth Street, 2nd Floor
Hollister, CA 95023

District Attorney, San Bernardino Co.
Attn: Prop. 65 Enforcement
316 N. Mountain View Avenue
San Bernardino, CA 92415-0004

District Attorney, San Mateo County
Attn: Prop. 65 Enforcement
400 County Ctr., 3rd Floor
Redwood City, CA 94063

District Attorney, Sutter County
Attn: Prop. 65 Enforcement
446 Second Street
Yuba City, CA 95991

District Attorney, Santa Cruz County
Attn: Prop. 65 Enforcement
701 Ocean Street, Room 200
Santa Cruz, CA 95060

District Attorney, Shasta County
Attn: Prop. 65 Enforcement
1525 Court Street, Third Floor
Redding, CA 96001-1632

District Attorney, Sierra County
Attn: Prop. 65 Enforcement
Courthouse, Post Office Box 457
Downieville, CA 95936

District Attorney, Siskiyou County
Attn: Prop. 65 Enforcement
Post Office Box 986
Yreka, CA 96097

District Attorney, Kings County
Attn: Prop. 65 Enforcement
1400 West Lacey Boulevard
Hanford, CA 93230

District Attorney, Lake County
Attn: Prop. 65 Enforcement
255 N. Forbes Street
Lakeport, CA 95453

District Attorney, Los Angeles County
Attn: Prop. 65 Enforcement
210 West Temple Street, Rm 345
Los Angeles, CA 90012

District Attorney, Madera County
Attn: Prop. 65 Enforcement
209 West Yosemite Avenue
Madera, CA 93637

District Attorney, Marin County
Attn: Prop. 65 Enforcement
3501 Civic Center, Room 183
San Rafael, CA 94903

District Attorney, Mendocino County
Attn: Prop. 65 Enforcement
Post Office Box 1000
Ukiah, CA 95482

District Attorney, Modoc County
Attn: Prop. 65 Enforcement
204 S Court Street
Alturas, CA 96101-4020

District Attorney, Solano County
Attn: Prop. 65 Enforcement
600 Union Avenue
Fairfield, CA 94533

District Attorney, Stanislaus County
Attn: Prop. 65 Enforcement
800 11th Street, Room 200
Modesto, CA 95353

District Attorney, Tehama County
Attn: Prop. 65 Enforcement
Post Office Box 519
Red Bluff, CA 96080

District Attorney, Trinity County
Attn: Prop. 65 Enforcement
Post Office Box 310
Weaverville, CA 96093

District Attorney, Tuolumne County
Attn: Prop. 65 Enforcement
2 South Green
Sonora, CA 95370

District Attorney, Yuba County
Attn: Prop. 65 Enforcement
215 Fifth Street
Marysville, CA 95901

Los Angeles City Attorney's Office
Attn: Prop. 65 Enforcement
200 N. Main Street, Suite 1800
Los Angeles, CA 90012