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MUSICK, PEELER & GARRETT LLP  
Barry C. Groveman (State Bar No. 082239)  
*b.groveman@mpglaw.com*  
Ryan Hiete (State Bar No. 204614)  
*r.hiete@mpglaw.com*  
One Wilshire Boulevard, Suite 2000  
Los Angeles, California 90017-3383  
Telephone: 213-629-7600  
Facsimile: 213-624-1376

Jay F. Golida (State Bar No. 183691)  
Los Angeles Unified School District  
333 S. Beaudry Avenue, 23rd Floor  
Los Angeles, California 90017  
Telephone: (213) 241-5140  
Facsimile: (888) 605-8603

Attorneys for LOS ANGELES UNIFIED SCHOOL DISTRICT

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

LOS ANGELES UNIFIED SCHOOL  
DISTRICT,  
  
Plaintiff,  
  
vs.  
  
SUN COUNTRY SYSTEMS, INC., a  
California corporation.  
  
Defendant.

CASE No. **BC418063**  
**COMPLAINT**  
  
Trial Date: None Set

Plaintiff, LOS ANGELES UNIFIED SCHOOL DISTRICT, by and through its counsel,  
hereby alleges:

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*Exempt from filing fees pursuant  
to Cal. Gov't Code § 6103*  
**CONFORMED COPY**  
OF ORIGINAL FILED  
Los Angeles Superior Court  
  
JUL 17 2009  
  
John A. Clarke, Executive Officer/Clerk  
By *[Signature]* Deputy  
**DAWN ALEXANDER**

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I. PRELIMINARY STATEMENT

1. This complaint seeks to remedy the failure of Defendant (identified below) to warn persons of exposure to lead and carbon black, both chemicals known to the State of California to cause birth defects, or other reproductive harm. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6, also known as "Proposition 65," businesses must provide persons with a "clear and reasonable warning" before exposing individuals to chemicals known to the state to cause cancer or reproductive harm.

2. In failing to provide the required warnings, Defendant engaged in unfair business practices and is liable to Plaintiff (identified below) for injuries caused to Plaintiff, pursuant to California Business and Professions Code section 17200.

3. Further, Defendant, in providing a defective and dangerous product to Plaintiff, is liable to Plaintiff for breach of contract, negligence, and products liability.

II. PARTIES

A. Plaintiff

4. Plaintiff is the LOS ANGELES UNIFIED SCHOOL DISTRICT (hereinafter the "District"). Health and Safety Code section 25249.7(d) provides that actions to enforce Proposition 65 may be brought by any person in the public interest if: (1) notice is provided to "the Attorney General and the district attorney, city attorney, or prosecutor in whose jurisdiction the violation is alleged to have occurred, and to the alleged violator" at least 60 days prior to commencing a private action; and, (2) "[n]either the Attorney General, any district attorney, any city attorney, nor any prosecutor has commenced and is diligently prosecuting an action against the violation." Cal. Health & Safety Code § 25249.7(d).

B. Defendant

5. Defendant SUN COUNTRY SYSTEMS, INC. ("Sun Country") is a business entity with ten or more employees that sells, or has, at times relevant to this complaint, authorized the manufacture, distribution, or sale of crumb rubber products under the brand name Sun Country and other brand names, that contain lead and carbon black, for sale within the State of California,

1 without first giving clear and reasonable warning.

2 6. Sun Country will be referred to as "Defendant."

3

4 **III. JURISDICTION AND VENUE**

5 7. This Court has jurisdiction pursuant to California Constitution Article VI, section  
6 10, because this case is a cause not given by statute to other trial courts.

7 8. This Court has jurisdiction over Defendant because Defendant is a business entity  
8 that does sufficient business, has sufficient minimum contacts in California, or otherwise  
9 intentionally avails itself of the California market, through the sale, marketing and use of its  
10 products in California, to render the exercise of jurisdiction over it by the California courts  
11 consistent with traditional notions of fair play and substantial justice.

12 9. Venue is proper in this Court because the cause, or part thereof, arises in Los  
13 Angeles County because Defendant's products are sold and consumed in this county.

14

15 **IV. STATUTORY BACKGROUND**

16 10. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative  
17 statute passed as "Proposition 65" by a vote of the people in November of 1986.

18 11. The warning requirement of Proposition 65 is contained in Health and Safety  
19 Codesection 25249.6, which provides: "No person in the course of doing business shall  
20 knowingly and intentionally expose any individual to a chemical known to the state to cause  
21 cancer or reproductive toxicity without first giving clear and reasonable warning to such  
22 individual, except as provided in Section 25249.10."

23 12. An exposure to a chemical in a consumer product is one "which results from a  
24 person's acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a  
25 consumer good, or any exposure that results from receiving a consumer service." (Cal. Code  
26 Regs., tit. 22, § 12601, subd. (b).).

27 13. Proposition 65 establishes a procedure by which the state is to develop a list of  
28 chemicals "known to the State to cause cancer or reproductive toxicity." (Health & Saf. Code, §

1 25249.8.) No warning need be given concerning a listed chemical until one year after the  
2 chemical first appears on the list. (*Id.*, § 25249.10, subd. (b)).

3 14. Any person “violating or threatening to violate” the statute may be enjoined in any  
4 court of competent jurisdiction. (Health & Saf. Code, § 25249.7.) To “threaten to violate” is  
5 defined to mean “to create a condition in which there is a substantial probability that a violation  
6 will occur.” (*Id.*, § 25249.11, subd. (e).) In addition, violators are liable for civil penalties of up to  
7 \$2,500 per day for each violation, recoverable in a civil action. (*Id.*, § 25249.7, subd. (b)).

8 15. Private parties are given authority to enforce Proposition 65 “in the public  
9 interest,” but only if the private party first provides written notice of a violation to the alleged  
10 violator, the Attorney General, and every District Attorney in whose jurisdiction the alleged  
11 violation occurs. If no public prosecutors commence enforcement within sixty days, then the  
12 private party may sue. (Health & Saf. Code, § 25249.7(d)).

## 13 14 V. FACTS

15 16. “Lead” was placed in the Governor’s list of chemicals known to the State of  
16 California to cause reproductive toxicity on February 27, 1987. It is specifically identified under  
17 three subcategories: “developmental reproductive toxicity,” which means harm to the developing  
18 fetus, “female reproductive toxicity,” which means harm to the female reproductive system, and  
19 “male reproductive toxicity,” which means harm to the male reproductive system. (Cal. Code  
20 Regs., tit. 22, § 12000, subd. (c)).

21 17. “Lead and lead compounds” were placed in the Governor’s list of chemicals  
22 known to the State of California to cause cancer on October 1, 1992. (Cal. Code Regs., tit. 22, §  
23 12000, subd. (b)).

24 18. “Carbon black” was placed in the Governor’s list of chemicals known to the State  
25 of California to cause cancer on February 21, 2003. (Cal. Code Regs., tit. 22, § 12000, subd. (c)).

26 19. Sun Country sells, installs and services all-rubber infill, artificial turf systems.

27 20. Sun Country used crumb rubber infill that contained lead and carbon black in  
28 artificial turf products.

1           21.     Sun Country installed artificial turf products at over 25 schools, including  
2 elementary, middle and high schools, owned and operated by the District (hereinafter the  
3 "Affected Schools"). The Affected Schools are located in the City of Los Angeles, County of  
4 Los Angeles, California, and are further described in "Exhibit A" attached hereto and  
5 incorporated herein by reference, which lists the school properties, the approximate square  
6 footage of the artificial turf product, and the laboratory analytical results for lead obtained for  
7 samples taken at such properties.

8           22.     The Material Safety Data Sheets ("MSDS") provided to the District by Sun  
9 Country in relation to the infill rubber used in conjunction with the artificial turf product identifies  
10 constituents such as styrene butadiene rubber ("SBR") and "crumb rubber." The term "crumb  
11 rubber" typically refers to a styrene butadiene rubber composed of granulated used tire rubber.  
12 The MSDS also list carbon black, a Proposition 65 listed carcinogen, as an ingredient in the  
13 crumb rubber. According to the MSDS, the concentration of carbon black in the crumb is  
14 approximately forty percent (40%). Attached hereto as "Exhibit B" and incorporated herein by  
15 reference is the MSDS for the crumb rubber infill installed in conjunction with the artificial turf  
16 product at the Affected Schools.

17           23.     From on or about January 2006 to the present, the District contracted with Sun  
18 Country to install artificial turf at the Affected Schools listed on "Exhibit A." Artificial turf was  
19 installed in the playgrounds and playing fields at the Affected Schools. These locations are used  
20 by students between the ages of five and 18 for several hours per day throughout the school year.  
21 These locations are outdoors and exposed to the intense California sunshine and summer  
22 temperatures that oftentimes exceed 100 degrees Fahrenheit. Sunlight and heat contribute to the  
23 break-down of both the artificial turf and crumb rubber infill, and result in increased particulate  
24 and dust generation.

25           24.     The District understood that the crumb rubber would be applied only as an  
26 underlayment as a foundational layer beneath the upper artificial grass turf, and that the crumb  
27 rubber would not be used as an "infill" that would have direct human contact. Accordingly, the  
28 District approved the use of crumb rubber as underlayment, and not as infill. Nonetheless, Sun

1 Country installed the crumb rubber as infill between the synthetic grass in a location that brought  
2 it into direct contact with the children playing on the artificial turf.

3       25. The presence of the crumb rubber infill, used in conjunction with the artificial turf  
4 product at the Affected Schools, has caused the release of chemicals known to the State of  
5 California to cause cancer and reproductive toxicity that is threatening children and the Affected  
6 Schools. Currently, the identified chemicals of concern are lead and carbon black. The routes of  
7 exposure are dermal absorption, inhalation, and oral ingestion both at the Affected Schools and  
8 potentially at homes, as the children carry and transport the turf and/or rubber dust on their  
9 clothing. The potential health risks for lead are well known and documented in the medical  
10 literature. These risks include cancer, neurological toxicity, decreased IQ and reproductive and  
11 developmental toxicity.

12       26. The contaminant exposures and potential soil releases have occurred since at least  
13 January 2006 at each of the Affected Schools. The extent of any releases into the air and soil is  
14 not known at this time and may be the subject of future testing.

15       27. At all times material to this complaint, Defendant has had knowledge that the  
16 crumb rubber infill used in the artificial turf products sold to the District contain lead and carbon  
17 black.

18       28. At all times material to this complaint, Defendant has had knowledge that  
19 individuals within the State of California handle the crumb rubber infill that contains lead and  
20 carbon black.

21       29. At all times material to this complaint, Defendant knew that the crumb rubber infill  
22 products were sold throughout the State of California in large quantities, and Defendant profited  
23 from such sales through, among other things, the sale of its crumb rubber infill for use in artificial  
24 turf products, which were then sold in California.

25       30. Notwithstanding this knowledge, Defendant intentionally authorized and re-  
26 authorized the sale of its crumb rubber infill products, which contained lead and carbon black.

27       31. At all times material to this complaint, Defendant has knowingly and intentionally  
28 exposed individuals within the State of California to lead and carbon black. The exposure is

1 knowing and intentional because it is the result of the Defendant's deliberate acts of authorizing  
2 the sale of products known to contain lead and carbon black in a manner whereby these products  
3 were, and would inevitably be, sold to consumers within the state of California, and with the  
4 knowledge that the intended use of these products will result in exposures to lead and carbon  
5 black within the State of California.

6 32. Defendant has failed to provide clear and reasonable warnings that the use of the  
7 products in question in California results in exposure to chemicals known to the State of  
8 California to cause cancer, birth defects and other reproductive harm, and no such warning was  
9 provided to those individuals or to the District by any person.

10  
11 **VI. NOTICE**

12 33. On December 17, 2008, the District issued a "60-day Notice of Violation of the  
13 Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65)" to Timothy William  
14 Hollinger, President, Sun Country Systems, Inc. The notice, sent pursuant to Health and Safety  
15 Code Section 25249.7(d)(1), informed the Defendant that the District intended to bring suit  
16 against it for violations of Proposition 65. As required, a copy of the notice was also sent to the  
17 California Attorney General and the Los Angeles City Attorney, among others. A copy of the  
18 notice is attached hereto as "Exhibit C."

19  
20 **VII. FIRST CAUSE OF ACTION**

21 (Against Defendant for Violation of Proposition 65)

22 34. Paragraphs 1 through 33 are realleged as if fully set forth herein.

23 35. By committing the acts alleged above, Defendant has, in the course of doing  
24 business, knowingly and intentionally exposed individuals in California to chemicals known to  
25 the State of California to cause cancer or reproductive toxicity without first giving clear and  
26 reasonable warning to such individuals, within the meaning of Health and Safety Code section  
27 25249.6.

28 36. Said violations render Defendant liable to Plaintiff for civil penalties not to exceed

1 \$2,500 per day for each violation, as well as other remedies.

2

3

**VIII. SECOND CAUSE OF ACTION**

4

(Against Defendant for Breach of Contract)

5

37. Paragraphs 1 through 36 are re-alleged as if fully set forth herein.

6

38. Defendant contracted with the District for the sale and installation of turf products containing or utilizing crumb rubber. In so contracting, Defendant, through express and implied warranties of merchantability and fitness for a particular purpose, agreed to provide safe artificial turf products to the District for use by children.

10

39. The District has performed all conditions, covenants and promises required of it in accordance with its sales contracts with Defendant, including payment in full of all amounts due under said contracts.

13

40. As a result of Defendant's failure to provide the quality, safe product that Defendant's agreed to provide, the District must test the Affected Schools to determine the extent of contamination and remediation needed. In the least, the District has or will incur costs to remove and replace the turf products at the Affected Schools. As a direct and proximate result of Defendant's breach of contract, the District will incur the costs of removal, replacement, testing and remediation in an amount as yet unknown, together with interest thereon at the legal rate from and after the date of the breach.

20

21

**X. THIRD CAUSE OF ACTION**

22

(Against Defendant for Products Liability)

23

41. Paragraphs 1 through 40 are re-alleged as if fully set forth herein.

24

42. Defendant designed, manufactured, produced, distributed, and sold turf products containing and utilizing crumb rubber to the District. Defendant knew or should have known that its products contained lead and carbon black. Defendant knew or should have known that its products would be used on school property, and that the specific use of the crumb rubber would result in a very high likelihood of physical contact and inhalation by children and others.

28



1           43. On account of the presence of harmful carcinogens in the crumb rubber, including  
2 lead and carbon black, Defendant designed, manufactured, produced, distributed, and sold a  
3 defective product.

4           44. On account of the defect in the product designed, manufactured, produced,  
5 distributed, and sold by Defendant, the District incurred or will incur damages in the form of costs  
6 to test the Affect Schools for contamination, and costs to remove and replace the contaminated  
7 turf products in order to avoid grave harm to the children and others who would be exposed to the  
8 contaminants in Defendant's products. As a direct and proximate result of the District's purchase  
9 of Defendant's defective products, the District will incur the costs of removal, replacement,  
10 testing and remediation in an amount as yet unknown.

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**XI. FOURTH CAUSE OF ACTION**  
(Against Defendant for Negligence)

45. Paragraphs 1 through 44 are re-alleged as if fully set forth herein.

46. Defendant, by voluntarily placing its products into the stream of commerce and purporting to provide an artificial turf product that would be safe for use on school grounds by children, bore a duty of care to the District. By providing a contaminated product to the District with a high propensity to cause toxic harm to children and others using Defendant's products, Defendant breached its duty of care and caused the District to suffer economic injuries in the form of testing costs, remediation, and replacement of the contaminated turf products. Such breach constitutes an act of negligence on the part of Defendant.

47. Said negligence renders Defendant liable to the District for compensatory damages. As a direct and proximate result of Defendant's negligence, the District will incur the costs of removal, replacement, testing and remediation in an amount as yet unknown.

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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that the Court:

1. Pursuant to the First Cause of Action, grant civil penalties;
2. Pursuant to the Second Cause of Action, compensate Plaintiff for all damages that have been incurred or will be incurred on account of Defendant's breach of contract;
4. Pursuant to the Third Cause of Action, compensate Plaintiff for all damages that have been incurred or will be incurred on account of Defendant's defective design;
5. Pursuant to the Fourth Cause of Action, compensate Plaintiff for all damages that have been incurred or will be incurred on account of Defendant's negligence;
6. Award Plaintiff its cost of suit; and,
7. Grant such other and further relief as the Court deems just and proper.

DATED: July 17, 2009

Respectfully submitted,

MUSICK, PEELER & GARRETT LLP

By:

  
\_\_\_\_\_  
Ryan Hiete  
Attorneys for  
LOS ANGELES UNIFIED SCHOOL DISTRICT

LEAD SAMPLE RESULTS FOR ARTIFICIAL TURF AND RUBBERIZED PELLETS

Loc. code	School	Type	Size ft	Material	Surface	Concentration
9545	102nd St	EEC	14 x 20	SPRINTURF	Safturf	64 ppm
9570	24th St	EEC	12 x 12	SPRINTURF	Safturf	22 ppm
9595	28th St	EEC	10 x 20	SPRINTURF	Safturf	27 ppm
9593	37th St	EEC	20 x 30	SPRINTURF	Safturf	30 ppm
9516	52nd St	EEC	10 x 10	SPRINTURF	Safturf	21 ppm
9538	95th St	EEC	20 x 28	SPRINTURF	Safturf	33 ppm
9579	Brooklyn	EEC	20 X 30	SPRINTURF	Safturf	32 ppm
9508	Cabrillo	EEC	13 x 21	SPRINTURF	Safturf	22 ppm
9597	Crescent Hts	EEC	19 x 20	SPRINTURF	Safturf	63ppm
9512	Dacotah	EEC		SPRINTURF	Safturf	23 ppm
9513	Dayton Hts	EEC	10 x 10	SPRINTURF	Safturf	64 ppm
9514	Dolores	EEC	18 x 30	SPRINTURF	Safturf	24 ppm
9518	Graham	EEC	10 x 10	SPRINTURF	Safturf	33 ppm
9524	Holmes	EEC	10 x 20	SPRINTURF	Safturf	26 ppm
9527	Hyde Park	EEC		SPRINTURF	Safturf	35 ppm
9528	Kentwood	EEC	12 x 24	SPRINTURF	Safturf	25 ppm
9591	Mikes, Wanda	EEC	29 x 19	SPRINTURF	Safturf	49 ppm
9590	Monte Vista	EEC	20 x 30	SPRINTURF	Safturf	40 ppm
9544	Norwood	EEC	15 x 20	SPRINTURF	Safturf	27 ppm
9549	Pinewood	EEC	8 x 20	SPRINTURF	Safturf	49 ppm
9562	Soto	EEC		SPRINTURF	Safturf	23 ppm
9565	Sylvan Park	EEC		SPRINTURF	Safturf	60 ppm
9567	Toland Way	EEC	10 x 20	SPRINTURF	Safturf	42 ppm
9569	Trinity	EEC	10 x 10	SPRINTURF	Safturf	50 ppm
9572	Vaughn	EEC		SPRINTURF	Safturf	33 ppm
9574	Vine	EEC	10 x 20	SPRINTURF	Safturf	29 ppm
9585	Wilmington	EEC	10 X 10	SPRINTURF	Safturf	64 ppm

5521

Crumb Rubber  
From Whole Tire Recycling

Nov. 1993  
Rev. 2 8/95

**MATERIAL SAFETY DATA SHEET**

B.A.S. Recycling, Inc.  
1400 North "H" Street  
San Bernardino, CA 92505

Emergency Phone Number (909) 383-7050

**I. PRODUCT IDENTIFICATION/CHEMICAL & PHYSICAL CHARACTERISTICS**

<b>PRODUCT NAME</b>	Crumb Rubber	<b>SOLUBILITY IN WATER</b>	Insoluble
<b>APPEARANCE</b>	Black granular particles	<b>ODOR</b>	Slight smell of vulcanized rubber
<b>SPECIFIC GRAVITY</b>	.95 TO 1.40	<b>MELTING POINT</b>	N/A
<b>VAPOR PRESSURE</b>	N/A	<b>VAPOR DENSITY</b>	N/A
<b>EVAPORATION RATE</b>	N/A	<b>BOILING POINT</b>	N/A

**II. HAZARDOUS INGREDIENTS**

MATERIAL (CAS)	wt %	OSHA PEL	(ACGIH TLV)
Napthenic/Aromatic Oil (64742-04-7)	Aprox. 20%		(5.0 mg/m <sup>3</sup> )
Carbon Black (1333-86-4)	Aprox. 40%	3.5 mg/m <sup>3</sup>	
Talc, respirable dust (14807-98-6)	Less than 5%	2.0 mg/m <sup>3</sup>	(2.0 mg/m <sup>3</sup> )
Zinc Oxide, fume (1314-13-2)	Less than 3%	5.0 mg/m <sup>3</sup>	(STEL) 10mg/m <sup>3</sup>
Zinc Oxide, total dust (1314-13-2)	Less than 3%	10.0 mg/m <sup>3</sup>	
respirable fraction	Less than 3%	5.0 mg/m <sup>3</sup>	

This product has been approved for LAUSD use  
 with restriction(s)  
 without restriction

8/11/05 (Signature)

Crumb Rubber

Nov. 1993, Rev 2

**III. FIRE AND EXPLOSION HAZARD DATA**

**FLASH POINT** Ignition temperature of dust cloud: 320C (608F) Approximately

**LEL** .025 ounces/cubic foot **UEL** N/A

**EXTINGUISHING MEDIA** Water, foam, dry powder (DO NOT USE HIGH PRESSURE WATER)

**SPECIAL FIRE FIGHTING PROCEDURES** Noxious gases may be formed under Fire conditions, wear NIOSH approved self-contained breathing apparatus.

**UNUSUAL FIRE AND EXPLOSION HAZARDS** \*Dust may be explosive if mixed with air in critical proportions and in the presence of an ignition source. The hazard is similar to that of many organic solids.

\*Estimate based on data for 200 mesh synthetic and crude hard rubber dust. Information contained in the NFPA Fire Protection Handbook.

**IV. REACTIVITY DATA**

**STABLE** YES

**CONDITIONS TO AVOID** Conditions that will cause ignition or burning

**INCOMPATIBILITY (materials to avoid)** Avoid strong oxidizing agents

**HAZARDOUS DECOMPOSITION OR BYPRODUCTS** Thermal decomposition may produce carbon monoxide, carbon dioxide, zinc oxide fume/dust, sulfur dioxide, liquid and gaseous hydrocarbons

**HAZARDOUS POLYMERIZATION** will not occur

**CONDITIONS TO AVOID** Do not store hot material in hoppers due to the possibility of spontaneous combustion

Crumb Rubber

Nov. 1993, Rev. 2

**V. HEALTH HAZARD DATA****ROUTES OF ENTRY** Inhalation

**HEALTH HAZARDS (Acute and Chronic)** The product can contain fine fibers that may cause itching. Otherwise, no health hazards are known. This material is generally thought to be a nuisance dust.

**CARCINOGENICITY** Rubber is not listed as a carcinogen.

**SIGNS AND SYMPTOMS OF EXPOSURE** Itching of skin, irritation of mucous membranes, sneezing and coughing, irritation of eye.

**MEDICAL CONDITIONS GENERALLY AGGRAVATED BY EXPOSURE** none  
Are known, however, it could potentially aggravate allergies to dust exposure or inhalation.

**EMERGENCY AND FIRST AID PROCEDURES** Normal washing of skin with soap and water, ordinary means of personal hygiene are adequate.

**VI. PRECAUTIONS FOR SAFE HANDLING AND USE**

**STEPS TO BE TAKEN IN CASE MATERIAL IS RELEASED OR SPILLED**  
Sweep or vacuum into disposal containers.

**WASTE DISPOSAL METHOD** Product not defined as a hazardous waste.  
Dispose of in accordance with federal, state, and local regulations.

**PRECAUTIONS TO BE TAKEN IN HANDLING AND STORING** Do not store near flame or ignition source. Do not store hot material in tubs or containers where spontaneous combustion could occur.

**OTHER PRECAUTIONS** If material burns, oils will be released. These must be disposed of in accordance with federal, state, and local regulations.

Crumb Rubber

Nov. 1993, Rev 2

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VII. CONTROL MEASURES

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**RESPIRATORY PROTECTION (Specify Type)** Use any dust and mist respirator for up to 10mg/m<sup>3</sup>

**VENTILATION** Yes

**LOCAL EXHAUST** Yes, if dusty conditions occur

**SPECIAL** None

**MECHANICAL (General)** Dust collectors and exhaust fans

**PROTECTIVE GLOVES** Recommended

**EYE PROTECTION** Use safety goggles to prevent dust entry

**OTHER PROTECTIVE CLOTHING OR EQUIPMENT** Enough fresh air should flow past the user to prevent exposure to airborne fibers and particles.

**WORK/HYGIENIC PRACTICES** Good personal hygiene, frequent washing with soap and water of exposed areas, remove and clean soiled clothing

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The information contained in this MSDA is consistent with the U.S. Department of Labor OSHA Form OMB No. 1218-0072. Consult OSHA Hazard communication Standard 29 CFR 1910.1200 for additional information. To fully understand the use of any material the user should avail themselves of reference material and expert consultation in the fields of fire prevention, ventilation, and toxicology.

Crumb Rubber

Nov. 1993, Rev. 2

**REVISED STATEMENT FOR ALL CRUMB RUBBER BAGS****Only written material between the dividing lines should be included on bags**

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B.A.S. Recycling, Inc.  
1400 North "H" Street  
San Bernardino, CA 92405  
(909) 383-7050

**NOTICE** – This bag contains recycled ground rubber. This material is organic carbon based and is in a fully cured state. It is generally considered to be non toxic. However, during processing a dusty condition can be created. If these conditions exist, a dust mask and safety goggles are recommended to prevent any discomfort to eyes or nose. Normal washing with soap and water and other ordinary means of personal hygiene are adequate if material comes in contact with skin.

This material is stable and hazardous polymerization will not occur. As with many organic compounds such as wood, paper, gasoline, plastics, asphalt:

Noxious smoke and gases may be formed during fire conditions.  
Dust may be explosive if mixed with air in critical proportions  
in a confined area.

If a spill occurs, sweep or vacuum and place in disposal containers. Dispose of in accordance with federal, state, and local regulations.

This material is not classified as a solid flammable as defined in paragraph 1910.1200 of the OSHA Hazard Communication Rules when tested per 16CFR 1500.44. However, when subjected to open flame it will burn.

This material is not listed as a carcinogen by the IARC. Consult the MSDS for additional information.

---

B.A.S. Recycling, Inc.  
November 10, 1993  
REVISION 2 – June 1995



MUSICK, PEELER & GARRETT LLP  
ATTORNEYS AT LAW

HARRY C. GROVEMAN  
h.grovcman@mpglaw.com  
(213) 629-7863

ONE WILSHIRE BOULEVARD, SUITE 2000  
LOS ANGELES, CALIFORNIA 90017-3383

TELEPHONE: (213) 629-7600  
FACSIMILE: (213) 624-1376  
WWW.MUSICKPEELER.COM

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SANTA BARBARA  
WESTLAKE VILLAGE

FILE NO. 47715.046

December 17, 2008

**VIA REGISTERED MAIL**

Timothy William Hollinger, President  
Sun Country Systems, Inc.  
11710 Chisholm Court  
Santa Clarita, California 91390

Sako Beudjekian, Vice President and  
Registered Agent  
B.A.S. Recycling, Inc.  
1400 North "H" Street  
San Bernardino, California 92505

Sarkis Hratch, President  
B.A.S. Recycling, Inc.  
1400 North "H" Street  
San Bernardino, California 92505

Re: 60-Day Notice of Violation of The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65)

Dear Messrs. Hollinger, Hratch and Beudjekian:

As counsel for the Los Angeles Unified School District (the "District"), I am hereby providing this letter as notification, pursuant to California Health and Safety Code Section 25249.7(d)(1), that the District intends to bring suit against Sun Country Systems, Inc. (hereinafter "SCSI") and B.A.S. Recycling, Inc. (hereinafter "B.A.S.") for, among other claims, violations of California Health and Safety Code Section 25249.6 (also known as "Proposition 65"). Section 25249.6 provides:

"No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual, except as provided in Section 25249.10."

The following discussion will provide you with a greater understanding regarding the location of the exposure, the type of exposure, the method of exposure, and the approximate length of time the District properties at issue have been exposed to Proposition 65 listed contaminants released from and present in crumb rubber infill present in artificial or synthetic turf product known as "Safturf" located at over twenty-five (25) schools owned and maintained

MUSICK, PEELER & GARRETT LLP  
ATTORNEYS AT LAW

Timothy W. Hollinger, President, Sun Country Systems, Inc.  
Sarkis Hratch, President, B.A.S. Recycling, Inc.  
Sako Beudjekian, Vice President and Registered Agent, B.A.S. Recycling, Inc.  
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by the District. The following is intended to provide you with facts sufficient to enable you to undertake a meaningful investigation of the crumb rubber infill component of the synthetic turf product provided by SCSF and B.A.S. to the District, as well as the District's exposed property, and thereafter participate in the remedy of any environmental contamination that may have occurred on the premises of the District.

## **I. LOCATION OF SOURCE OF EXPOSURE**

The violation covered by this notice consists of the identified presence and potential release of and exposure to lead and carbon black from the crumb rubber infill that was provided by SCSF and B.A.S. and installed at over 25 schools, including elementary, middle and high schools, owned and operated by the District (hereinafter the "Affected Schools"). The Affected Schools are located in the City of Los Angeles, County of Los Angeles, California, and are further described in "Exhibit A" attached hereto and incorporated herein by reference, which lists the school properties, the approximate square footage of the artificial turf product, the date(s) of installation and the laboratory analytical results for lead obtained for samples taken at such properties.

The Material Safety Data Sheets ("MSDS") for the infill rubber used in conjunction with the artificial turf product identify constituents such as styrene butadiene rubber ("SBR") and "crumb rubber." The term "crumb rubber" typically refers to a styrene butadiene rubber composed of granulated used tire rubber. The MSDSs also list carbon black, a Proposition 65 listed carcinogen, as an ingredient in the crumb rubber. According to the MSDS, the concentration of carbon black in the crumb is approximately forty percent (40%). Attached hereto as "Exhibit B" and incorporated herein by reference are the MSDSs for the crumb rubber infill installed in conjunction with the Safturf product at the Affected Schools. Moreover, based on the District's understanding of similar artificial turf products, such products may also contain additional potential contaminants of concern and Proposition 65-regulated carcinogens and reproductive toxins, such as zinc oxide, lead chromate, chrysene, chromium, butylated hydroxyl anisole, as well as other yet identified carcinogenic polycyclic aromatic hydrocarbons ("PAHs").

The District is currently engaged in the process of testing and removing the infill rubber from the Affected Schools.

## **II. NATURE OF EXPOSURE**

A Proposition 65 exposure risk is posed by the lead and carbon black contaminants contained in the crumb rubber infill present and used in conjunction with the artificial Safturf product. Lead and carbon black are identified as chemicals known to cause cancer on the State of California's Proposition 65 list. Lead is further identified as a chemical

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known to cause reproductive and developmental toxicity. These contaminants of concern have been identified as originating in and being present in the crumb rubber infill used in conjunction with the Safturf product.

The Federal Department of Health and Human Services, Centers for Disease Control and Prevention ("CDC") has issued an official CDC Health Advisory on June 18, 2008, relating to artificial or synthetic turf. The CDC Health Advisory states that as an artificial turf ages and weathers, lead is released in dust that can be ingested or inhaled, which increases the risk of harmful exposure. The CDC Health Advisory further states that children under 6 years of age are more likely to be adversely affected by exposure to lead because of the increased air intake in relation to body size, they have increased contact with the surface of the fields and are more prone to engage in hand-to-mouth contact dust ingestion. Children also more readily transport lead and carbon black dust back to their homes on their clothing. Moreover, developing systems of children make them more susceptible to the adverse health effects of lead intake.

The State of New Jersey Department of Health and Senior Services ("NJDHSS") has also issued a Health Release announcing that "laboratory testing has shown that lead can be dissolved from artificial turf fibers and turf field dust under conditions that simulate the human digestive process, leaving the lead available for the body to absorb." The NJDHSS further stated, "We found that lead does dissolve from artificial turf fibers and turf dust under stomach acid conditions, and is available to be absorbed from the small intestine into the bloodstream." As such, children playing on these artificial surfaces are at risk due to exposure to lead contained in the turf dust, which can be taken up through dust inhalation, dust ingestion, hand-to-mouth contact or dermal skin absorption.

### III. EXTENT OF THE EXPOSURE

From on or about January 2006 to the present, the District contracted with SCSi to install artificial turf at the Affected Schools listed on Exhibit A. Artificial turf was installed in the playgrounds and playing fields at the Affected Schools. These locations are used by students between the ages of five and 18 for several hours per day throughout the school year. These locations are outdoors and exposed to the intense California sunshine and summer temperatures that oftentimes exceed 100 degrees Fahrenheit. Sunlight and heat contribute to the break-down of both the artificial turf and crumb rubber infill, and result in increased dust generation.

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**IV. ROUTE OF EXPOSURE AND ITS POTENTIAL HEALTH RISKS**

The presence of the crumb rubber infill, used in conjunction with the artificial turf product, at the Affected Schools has caused the release of chemicals known to the State of California to cause cancer and reproductive toxicity that is threatening children and the Affected Schools. Currently, the identified chemicals of concern are lead and carbon black. (However, as noted herein, additional testing may establish and confirm the presence of other chemicals of concern). The routes of exposure are dermal absorption, inhalation, and oral ingestion both at the Affected Schools and potentially at homes, as the children carry and transport the turf and/or rubber dust on their clothing. The potential health risks for lead are well known and documented in the medical literature. These risks include cancer, neurological toxicity, decreased IQ and reproductive and developmental toxicity.

The B.A.S. MSDS relating to the crumb rubber infill provides that the product contains carbon black at a concentration of forty percent (40%). Carbon black, which is identified as a "hazardous material" and human carcinogen by the State of California's Office of Environmental Health Hazard Assessment ("OEHHA"), is produced by the incomplete combustion of heavy petroleum products. The scientific literature states that, in conjunction with PAHs, the carcinogenic potential of carbon black is enhanced. The International Agency for Research on Cancer ("IARC") has also identified carbon black as a possible human carcinogen.

**V. TIME PERIOD DURING WHICH VIOLATION HAS OCCURRED**

The contaminant exposures and potential soil releases have occurred since at least January 2006 at each of the Affected Schools. The extent of any releases into the air and soil is not known at this time and may be the subject of future testing.

Moreover, during this time period, B.A.S and SCSi have not provided potentially-exposed individuals with a clear and reasonable warning that the crumb rubber infill poses a risk of exposure to any chemical regulated under Proposition 65. Specifically, both have failed to provide proper notice or warning that the crumb rubber infill contains lead or carbon black.

**VI. CONCLUSION**

Based upon the foregoing, the District believes that the crumb rubber infill used in conjunction with the artificial turf product has exposed the students, faculty, staff and the property at the Affected Schools to lead and carbon black. Such exposure also poses a potential threat to future students, faculty and staff at the Affected Schools. Moreover, the use of the crumb rubber infill in conjunction with the artificial turf product may also have exposed the students, faculty, staff and the premises of the Affected Schools to a number of other suspected

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carcinogens and reproductive toxins that are subject to regulation under Proposition 65. It may be necessary at a later date to conduct additional sampling and testing for potential exposure to other Proposition 65 chemicals, depending upon the results of further investigation and the information provided by SCSi and B.A.S. as a result of this notice.

Attached please find a copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986" (Proposition 65), prepared by OEHHA, the lead state agency for the implementation of the Act. ("Exhibit C").

Please direct all questions concerning this notice of violation to the following addressees: Barry C. Groveman, Esq. or William W. Carter, Esq., Musick, Peeler & Garrett LLP, One Wilshire Boulevard, 624 South Grand Avenue, Suite 2100, Los Angeles, California 90017-3383, (213) 629-7615 or (213) 629-7863, respectively. Should you require more information regarding the Affected Schools and/or exposure risks, the District will provide you with any available reports.

For general information concerning the provisions of Proposition 65, please contact OEHHA, Proposition 65 Implementation Office, at (916) 445-6900.

Very truly yours,



Barry C. Groveman, Esq.  
MUSICK, PEELER & GARRETT LLP

Enclosures  
BCG:WWC

cc: Jay F. Goida, Esq., LAUSD  
William W. Carter, Esq., MPG

MUSICK, PEELER & GARRETT LLP

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SERVICE LIST

Sarkis Hratch, President  
B.A.S. Recycling, Inc.  
1400 North "H" Street  
San Bernardino, CA 92505

Sako Beudjekian, Vice President and  
Registered Agent  
B.A.S. Recycling, Inc.  
1400 North "H" Street  
San Bernardino, California 92505

Timothy William Hollinger, President  
Sun Country Systems, Inc  
11710 Chisholm Court  
Santa Clarita, California 91390

Hamid Saebfar, Chief  
School Program and Engineering/Geology  
Support Division  
Department of Toxic Substances Control  
9211 Oakdale Avenue  
Chatsworth, California 91311

Honorable Edmund G. Brown, Jr.  
Attorney General  
California Department of Justice  
P.O. Box 944255  
Sacramento, California 94244-2550

Wayne Nastri, Administrator  
US EPA Region 9  
75 Hawthorne Street  
San Francisco, California 94105

Honorable Rockard J. Delgadillo  
City Attorney  
City of Los Angeles  
800 City Hall East, 8<sup>th</sup> Floor  
200 North Main Street  
Los Angeles, California 90012

Honorable Steve Cooley  
District Attorney  
County of Los Angeles  
210 West Temple Street, Suite 18000  
Los Angeles, California 90012-3210

William Jones  
Division Chief  
Health Hazardous Materials Division  
Los Angeles County Fire Department  
5825 Rickenbacker Road  
Commerce, California 90040

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612687.1

**CERTIFICATE OF MERIT**

Health and Safety Code Section 25249.7(d)

I, Barry C. Groveman, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day (60) notice in which it is alleged that the parties identified in the notices have violated California Health and Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am the attorney for the noticing party, Los Angeles Unified School District (the "District").


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.

DATED: December 17<sup>th</sup>, 2008

MUSICK, PEELER & GARRETT LLP

By:   
Barry C. Groveman, Esq.  
Attorneys for Los Angeles Unified School  
District

## ATTACHMENT TO CERTIFICATE OF MERIT

As referenced in the Certificate of Merit and required under California Health and Safety Code Section 25249.7(h)(2), the following information provides a basis for said Certificate. Specifically, the following individuals reviewed the below-described materials and information and made the listed conclusions, among other things:

Jeffrey Siegel  
Environmental Health Specialist II  
Office of Environmental Health and Safety  
Los Angeles Unified School District  
333 South Beaudry Avenue 20<sup>th</sup> Floor  
Los Angeles, California 90017  
(213) 241-3199

Mr. Siegel reviewed and analyzed 1) the Material Safety Data Sheets ("MSDS") relating to the artificial turf products and components at issue; 2) the laboratory analyses and reports for lead conducted by LA Testing Laboratory on samples obtained by the District from the artificial turf and components; and 3) specification documents relating to the artificial turf products and components, including those relating to styrene butadiene rubber ("SBR") or recycled "crumb rubber" used as infill in the products. Based upon the review of those materials and information, Mr. Siegel concluded that the product and its components contained chemicals regulated under Proposition 65, namely, lead and carbon black, for which no clear and reasonable warning or notice of potential exposure had been provided.

Daniel Fresquez  
Environmental Science Advisor  
Musick Peeler & Garrett LLP  
624 South Grand Avenue  
Los Angeles, California 90017  
(213) 629-7894

Mr. Fresquez reviewed and analyzed 1) MSDSs relating to the artificial turf products and components at issue; 2) the laboratory analyses and reports for lead conducted by LA Testing Laboratory on samples obtained by the District from the artificial turf and components; 3) specification documents relating to the artificial turf products and components, including those relating to SBR or recycled "crumb rubber" used as infill in the products; and 4) a District product evaluation memorandum and District product review correspondence. Based upon the review of those materials and information, Mr. Fresquez concluded that the product and its components contained chemicals regulated under Proposition 65, namely, lead and carbon black, for which no clear and reasonable warning or notice of potential exposure had been provided.