

**LAW OFFICES OF BRIAN GAFFNEY**  
605 Market Street, Suite 505, San Francisco, CA 94105  
(415) 442- 0711 Phone (415) 442-0713 Fax

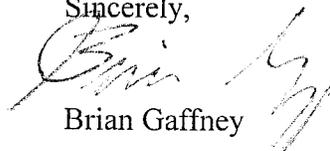
December 14, 2005

By Certified Mail, Return Receipt Requested to Violators  
By First Class U.S. Mail to Public Enforcement Agencies

Dear Public Enforcement Agencies / Violators:

This office and the Ecological Rights Foundation (ERF) gives you notice that, since at least December 14, 2002<sup>1</sup>, the businesses listed on Attachment A have been, and continue to be in violation of California Health & Safety Code §25249.6. Both this office and the ERF are private enforcers of Proposition 65, both may be contacted at the above listed address and telephone number, and I am a responsible individual with both ERF and this office. The above referenced violations occur when California residents handle and/or use lamps which contain leaded glass inserts, leaded mullions, leaded coming or lead solder (collectively "leaded glass lamps"). Examples of particular products manufactured, sold, distributed and/or marketed by the violators are attached as Attachment B. These leaded glass lamps contain lead and lead compounds ("lead"). When people touch or otherwise handle these leaded glass lamps, (i.e., when they remove these leaded glass lamps from their packaging; whenever they run their hands and/or fingers over the leaded glass mullions or lead solder; or when they clean, fix, install or replace these leaded glass lamps), lead that is in and on the leaded glass lamps comes off on their hands. This lead is then ingested and/or inhaled through hand-to-mouth, hand-to-food-to-mouth, and hand-to-cigarette-to-mouth-to-lungs behavior. This lead is also absorbed through the skin, enters the body via cuts and abrasions, and through mucous membranes when people with lead on their hands touch these mucous membranes. Leaded glass lamps sold by these businesses thus expose consumers and workers to lead via the dermal, ingestion, inhalation and subcutaneous routes. In addition, exposures in the environmental context occur in the homes, businesses, distribution outlets, retail outlets and public buildings where the leaded glass lamps are located. The environmental exposure for which a warning is required occurs beyond the property owned or controlled by the violators. Exposures to lead occur within the consumer, environmental, and occupational contexts. ERF, does not, however, allege occupational exposures as to leaded glass lamps manufactured outside of California, except as to the workplaces that these businesses maintain in California. The businesses listed on Attachment A do not provide clear and reasonable warnings to people who handle, touch, install, clean, repair, replace or use leaded glass lamps, that the leaded glass lamps will expose them to chemicals known to cause cancer and birth defects. These violations and threatened violations will continue to occur everyday until these businesses either provides clear and reasonable warnings, reformulate their lamps so as not to contain lead, or stop selling leaded glass lamps. These violations occur in all of California's 58 counties and both on and off of these businesses' properties.

Sincerely,

  
Brian Gaffney

Enclosure to Violators "The Safe Drinking Water and Toxic Enforcement Act of 1986: A Summary"

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<sup>1</sup> On February 27, 1987 lead was listed under the statute as a chemical known to the state of California to cause reproductive toxicity. On October 1, 1992 lead and lead compounds were listed under the statute as chemicals known to the State of California to cause cancer.

## **Attachment A**

Martha Stewart Living Omnimedia Inc.  
Attn: Susan Lyne, President  
11 W. 42nd St.  
New York, NY 10036

Martha Stewart Living Omnimedia LLC  
Attn: Susan Lyne, President  
20 West 43rd St  
New York, NY 10036

Kmart Corporation  
Attn: President & CEO  
3100 W. Big Beaver Rd.  
Troy, MI 48084

Kmart Holdings, Inc.  
Attn: President & CEO  
3100 West Big Beaver  
Troy, MI 48084

**Attachment B**

Proposition 65 Violator

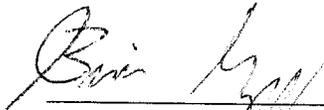
Products manufactured, sold, distributed and/or marketed

Martha Stewart Living Omnimedia Inc. Attn: Susan Lyne, President 11 West 42nd St. New York, NY 10036	Leaded glass lamps
Martha Stewart Living Omnimedia LLC Attn: Susan Lyne, President 20 West 43rd St New York, NY 10036	Leaded glass lamps
Kmart Corporation Attn: President & CEO 3100 W. Big Beaver Rd. Troy, MI 48084	Leaded glass lamps
Kmart Holdings, Inc. Attn: President & CEO 3100 West Big Beaver Troy, MI 48084	Leaded glass lamps

**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 605 Market St., Suite 505, San Francisco, CA 94105. On December 14, 2005, I caused the attached 60-DAY NOTICE LETTER, to be served by U.S. Mail on those public enforcement agencies listed on the attached SERVICE LIST; in addition on the same date and by Certified Mail I caused the attached 60-DAY NOTICE LETTER and PROPOSITION 65: A SUMMARY to be sent by Certified Mail to the private business entities also listed on the attached SERVICE LIST. 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. 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 December 14, 2005, at San Francisco, California.

  
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Brian Gaffney

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This notice alleges the violation of Proposition 65 with respect to occupational exposures governed by the California State Plan for Occupational Safety and Health. The State Plan incorporated the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997. This approval specifically placed certain conditions on Proposition 65, including that it does not apply to the conduct of manufacturers occurring outside the State of California. The approval also provides that an employer may use the means of compliance in the general hazard communication requirements to comply with Proposition 65. It also requires that supplemental enforcement is subject to the supervision of the California Occupational Safety and Health Administration. Accordingly, any settlement, civil complaint, or substantive court orders in this matter must be submitted to the Attorney General.

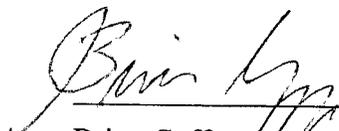
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**CERTIFICATE OF MERIT**

Health and Safety Code Section 25249.7(d)

I, Brian Gaffney, hereby declare: 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. I am the attorney for the noticing party. 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. 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 plaintiffs' 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. 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.

December 14, 2005

  
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Brian Gaffney

## SERVICE LIST

EDWARD WEIL SUPERVISING DEPUTY ATTORNEY GENERAL OFFICE OF THE ATTORNEY GENERAL P.O. BOX 70550 OAKLAND, CA 94612-0550	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF HUMBOLDT 825 5TH ST. EUREKA, CA 95501	COUNTY OF NAPA 931 PARKWAY MALL P.O. BOX 720 NAPA, CA 94559-0720	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SOLANO 600 UNION AVE FAIRFIELD, CA 94533
OFFICE OF THE CITY ATTORNEY CITY OF SAN FRANCISCO CITY HALL ROOM 206 400 VAN NESS SAN FRANCISCO, CA 94102	COUNTY OF IMPERIAL COURTHOUSE, FLOOR 2 939 W. MAIN ST EL CENTRO, CA 92243	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF NEVADA COURTHOUSE ANNEX NEVADA CITY, CA 95959	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SONOMA 600 ADMINISTRATION DR. #212J SANTA ROSA, CA 95403
OFFICE OF THE CITY ATTORNEY CITY OF SACRAMENTO 980 9 <sup>th</sup> Street, 10 <sup>th</sup> Floor SACRAMENTO, CA 95814	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF INYO P.O. DRAWER D INDEPENDENCE, CA 93526	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF ORANGE 700 CIVIC CENTER DR WEST #A-200 SANTA ANA, CA 92701	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF STANISLAUS 1100 I ST. #200 MODESTO, CA 95354
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OFFICE OF THE CITY ATTORNEY CITY OF SAN DIEGO 202 C ST. FLOOR 3 SAN DIEGO, CA 92101	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF LAKE 255 N. FORBES ST # 424 LAKEPORT, CA 95453	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SACRAMENTO P.O. BOX 749 SACRAMENTO, CA 95804	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF TULARE COURTHOUSE #224 VISALIA, CA 93291
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF ALAMEDA 225 FALLON ST. #9 OAKLAND, CA 94612	OFFICE OF THE DISTRICT ATTORNEY COUNTY ADMINISTRATION BUILDING 707 NEVADA ST. SUSANVILLE, CA 96130	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN BENITO 419 4TH ST HOLLISTER, CA 95023	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF TUOLUMNE 2 S. GREEN ST. SONORA, CA 95370
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF ALPINE P.O. BOX 248 MARKLEEVILLE, CA 96120	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF LOS ANGELES 18000 CRIMINAL COURTS BUILDING 210 W. TEMPLE ST. LOS ANGELES, CA 90012	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN BERNARDINO 316 MT. VIEW AVE. SAN BERNARDINO, CA 92415-0004	VENTURA COUNTY DISTRICT ATTORNEY'S OFFICE c/o GREGORY BROSE D.D.A. 4245 MARKET ST. #205 VENTURA, CA 93003
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF AMADOR 708 COURT STREET JACKSON, CA 95642	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MADERA 209 W. YOSEMITE AVE. MADERA, CA 93637	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN DIEGO 101 W. BROADWAY #1440 SAN DIEGO, CA 92101	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF YOLO 204 4TH ST P.O. BOX 1247 WOODLAND, CA 95695
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF BUTTE 25 COUNTY CENTER DR OROVILLE, CA 95965	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MARIN HALL OF JUSTICE #183 SAN RAFAEL, CA 94903	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN FRANCISCO 850 BRYANT ST #322 SAN FRANCISCO, CA 94103	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF YUBA 215 5TH ST. MARYSVILLE, CA 95901
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF CALAVERAS GOVERNMENT CENTER 891 MOUNTAIN RANCH ROAD SAN ANDREAS, CA 95249	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MARIPOSA P.O. BOX 748 MARIPOSA, CA 95338	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN JOAQUIN 222 E. WEBER AVE #202 STOCKTON, CA 95202	MARTHA STEWART LIVING OMNIMEDIA INC. ATTN: SUSAN LYNE, PRESIDENT 11 W. 42ND ST. NEW YORK, NY 10036
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF COLUSA 547 MARKET ST. COLUSA, CA 95932	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MENDOCINO 301 S. STATE ST. UKIAH, CA 95482	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN LUIS OBISPO COUNTY GOVERNMENT CENTER #450 SAN LUIS OBISPO, CA 93408	MARTHA STEWART LIVING OMNIMEDIA LLC ATTN: SUSAN LYNE, PRESIDENT 20 WEST 43RD ST NEW YORK, NY 10036
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF CONTRA COSTA P.O. BOX 670 MARTINEZ, CA 94553	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MERCED 2222 M ST. MERCED, CA 95340	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SANTA BARBARA 1105 SANTA BARBARA ST. SANTA BARBARA, CA 93101	KMART CORPORATION ATTN: PRESIDENT & CEO 3100 W. BIG BEAVER RD. TROY, MI 48084
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF DEL NORTE 450 H ST #171 CRESCENT CITY, CA 95531	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MODOC 204 SOUTH COURT STREET ALTURAS, CA 96101	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SANTA CLARA 70 W. HEDDING ST. SAN JOSE, CA 95110	KMART HOLDINGS, INC. ATTN: PRESIDENT & CEO 3100 WEST BIG BEAVER TROY, MI 48084
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF EL DORADO 515 MAIN ST. PLACERVILLE, CA 95667	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MONO P.O. BOX 617 BRIDGEPORT, CA 93517	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SANTA CRUZ 701 OCEAN ST. #200 SANTA CRUZ, CA 95060	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SHASTA 1525 COURT ST REDDING, CA 96001
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF FRESNO 2220 TULARE ST #1000 FRESNO, CA 93721	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MONTEREY P.O. BOX 180 SALINAS, CA 93902	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SIERRA P.O. BOX 457 DOWNIEVILLE, CA 95936	
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF GLENN P.O. BOX 430 WILLOWS, CA 95988		OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SISKIYOU P.O. BOX 986 YREKA, CA 96097	