SAN FRANCISCO | 201 Spear Street
Los Angeles | Suite 1000
New York | San Francisco, CA 94105
Redwood City | Telephone (415) 543-4800
San Jose | Facsimile (415) 972-6301
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LAWYERS
RMKB
ROPERS MAJESKI KOHN BENTLEY

Thomas H. Clarke, Jr.
(415) 972-6387

tclarke@ropers.com

August 31, 2006

**SIXTY-DAY NOTICE OF VIOLATION**

Alan Bishara, President
Wendbay, Inc.
499 El Camino Real
San Bruno, CA 94066

Dear Mr. Bishara:

California's Proposition 65 (which can be found at Sections 25249.6 et seq. of the Health & Safety Code) is designed to promote awareness of potential exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products or produced by industrial activities. Attached to this letter is a copy of "Proposition 65: A Summary", which has been prepared by the State of California, Office of Environmental Health Hazard Assessment ("OEHHA"). OEHHA may be contacted at 916-445-6900. OEHHA's web site pertaining to Proposition 65 may be found at: http://www.oehha.ca.gov/prop65.html.

RMKB and Alicia Moore ("Plaintiff") hereby give you notice that your Wendbay, Inc. and Wendy's Old Fashioned Hamburgers establishment has been, is currently, and threaten to be in violation of California Health & Safety Code § 25249.6; this sixty-day notice is sent to you in compliance with § 25249.7(d) California Health & Safety Code. Both RMKB and Plaintiff are private enforcers of Proposition 65, as provided by California Health & Safety Code § 25249.7(d). You may contact both RMKB and Plaintiff at the above listed address and telephone number; I am counsel for and represent Plaintiff in this matter.

The above-referenced violations occur when California consumers purchase and ingest your French fry product (the "Product"). The Product contains naphthalene, a chemical known to the State of California to cause cancer and reproductive toxicity. California residents are exposed to naphthalene when they ingest the Product. This naphthalene is then absorbed into the body through the gastrointestinal tract wherein it causes the harm noted.

Your business did not and does not provide consumers with clear and reasonable warnings before it exposes them to naphthalene, as required by Health & Safety Code § 25249.6. These violations have occurred every day for at least the last year, and will continue every day until the naphthalene is removed from the Product or until clear and reasonable warnings are

given. The Proposition 65 violations noted herein occur in each of California's 58 counties, or in such Counties as your Product are sold or consumed.

Sincerely,

Thomas H. Clarke, Jr.

IRS CIRCULAR 230 NOTICE: To ensure compliance with requirements imposed by the Internal Revenue Service, we inform you that any U.S. tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this communication (or in any attachment).

**CERTIFICATE OF MERIT**
**Health & Safety Code Section 25249.7(d)**

I, Thomas H. Clarke, Jr., 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 & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am the attorney for the noticing parties.

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 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.

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 & 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: August 31, 2006

Thomas H. Clarke, Jr.

## SERVICE LIST

| | | | |
|---|---|---|---|
| Edward G. Weil<br>Deputy Attorney General<br>Office of the Attorney General<br>P.O. Box 70550<br>Oakland, CA 94612-0550 | Office of the District Attorney<br>County of Glenn<br>P.O. Box 430<br>Willows, CA 95988-0430 | Office of the District Attorney<br>County of Monterey<br>240 Church Street<br>P.O. Box 180<br>Salinas, CA 93902-0180 | Office of the District Attorney<br>County of Siskiyou<br>P.O. Box 986<br>Yreka, CA 96097-0986 |
| Office of the City Attorney<br>City of Oakland<br>505 14th Street, 12th Floor<br>Oakland, CA 94612-1406 | Office of the District Attorney<br>County of Humboldt<br>825 5th Street<br>Eureka, CA 95501-1107 | Office of the District Attorney<br>County of Napa<br>931 Parkway Mall<br>P.O. Box 720<br>Napa, CA 94559-0720 | Office of the District Attorney<br>County of Solano<br>600 Union Avenue<br>Fairfield, CA 94533-6326 |
| Office of the City Attorney<br>City of San Francisco<br>City Hall, Room 206<br>400 Van Ness<br>San Francisco, CA 94102-4630 | Office of the District Attorney<br>County of Imperial<br>Courthouse Floor 2<br>939 West Main Street<br>El Centro, CA 92243-2860 | Office of the District Attorney<br>County of Nevada<br>201 Church St., Ste. 8<br>Nevada City, CA 95959-2860 | Office of the District Attorney<br>County of Sonoma<br>600 Administration Dr., #212J<br>Santa Rosa, CA 95403-2876 |
| Office of the City Attorney<br>City of Sacramento<br>980 9th Street, 10th Floor<br>Sacramento, CA 958142736 | Office of the District Attorney<br>County of Inyo<br>P.O. Drawer D<br>Independence, CA 93526-0604 | Office of the District Attorney<br>County of Orange<br>700 Civic Center Drive West<br>#A-200<br>Santa Ana, CA 92701-4405 | Office of the District Attorney<br>County of Stanislaus<br>1100 I Street, #200<br>Modesto, CA 95354-2325 |
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| Office of the City Attorney<br>City of Los Angeles<br>200 North Main Street<br>Los Angeles, CA 90012-4110 | Office of the District Attorney<br>County of Kings<br>1400 West Lacey Boulevard<br>Hanford, CA 93230-5962 | Office of the District Attorney<br>County of Plumas<br>520 Main Street, Room 404<br>Quincy, CA 95971-9116 | Office of the District Attorney<br>County of Tehama<br>P.O. Box 519<br>Red Bluff, CA 96080-0519 |
| Office of the City Attorney<br>City of San Diego<br>202 C Street, Floor 3<br>San Diego, CA 92101-4806 | Office the District Attorney<br>County of Lake<br>255 North Forbes St., #424<br>Lakeport, CA 95453-4756 | Office of the District Attorney<br>County of Sacramento<br>P.O. Box 749<br>Sacramento, CA 95812-0749 | Office of the District Attorney<br>County of Trinity<br>P.O. Box 310<br>Weaverville, CA 96093-0310 |
| Office of the District Attorney<br>County of Alameda<br>225 Fallon Street, #9<br>Oakland, CA 94612-4609 | Office of the District Attorney<br>County of Lassen<br>County Administration Bldg.<br>707 Nevada Street<br>Susanville, CA 96130-3912 | Office of the District Attorney<br>County of San Benito<br>419 4th Street<br>Hollister, CA 95023-3801 | Office of the District Attorney<br>County of Tulare<br>County Civic Center<br>221 So. Mooney Blvd., Rm. 224<br>Visalia, CA 93291-4547 |
| Office of the District Attorney<br>County of Alpine<br>P.O. Box 248<br>Markleeville, CA 96120-0248 | Office of the District Attorney<br>County of Los Angeles<br>18000 Criminal Court Bldg.<br>210 West Temple Street<br>Los Angeles, CA 90012-3210 | Office of the District Attorney<br>County of San Bernardino<br>316 Mt. View Avenue<br>San Bernardino, CA 92408-1415 | Office of the District Attorney<br>County of Tuolumne<br>2 South Green Street<br>Sonora, CA 95370-4618 |
| Office of the District Attorney<br>County of Amador<br>708 Court Street, Suite 202<br>Jackson, CA 95642-2308 | Office of the District Attorney<br>County of San Diego<br>330 West Broadway<br>San Diego, CA 92101 | Office of the District Attorney<br>County of Ventura<br>4245 Market Street, #205<br>Ventura, CA 93003-8009 | Office of the District Attorney<br>County of Butte<br>25 County Center Drive<br>Oroville, CA 95965-3375 |

**ATTORNEY GENERAL COPY CONTAINS OFFICIAL INFORMATION PURSUANT TO EVIDENCE CODE § 1040**

| | | | |
|---|---|---|---|
| Office of the District Attorney<br>County of Madera<br>209 West Yosemite Avenue<br>Madera, CA 93637-3534 | Office of the District Attorney<br>County of San Francisco<br>850 Bryant Street, #322<br>San Francisco, CA 94103-4600 | Office of the District Attorney<br>County of San Joaquin<br>222 E. Weber Ave, #202<br>Stockton, CA 95202-2706 | Office of the District Attorney<br>County of Yolo<br>301 Second Street<br>Woodland, CA 95695 |
| Office of the District Attorney<br>County of Calaveras<br>Government Center<br>891 Mountain Ranch Road<br>San Andreas, CA 95249-9713 | Office of the District Attorney<br>County of Marin<br>3501 Civil Center Dr., Rm. 130<br>San Rafael, CA 94903-5207 | Office of the District Attorney<br>County of San Luis Obispo<br>County Government Center<br>#450<br>San Luis Obispo, CA 93408-0002 | Office of the District Attorney<br>County of Yuba<br>215 5th Street<br>Marysville, CA 95901-5737 |
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| Office of the District Attorney<br>County of Mendocino<br>100 North State Street<br>Ukiah, CA 95482 | Office of the District Attorney<br>County of Santa Barbara<br>1112 Santa Barbara Street<br>Santa Barbara, CA 93101-2008 | Office of the District Attorney<br>County of Del Norte<br>450 H Street, #171<br>Crescent City, CA 95531-4092 | Office of the District Attorney<br>County of Merced<br>2222 M Street<br>Merced, CA 95340-3729 |
| Office of the District Attorney<br>County of Santa Clara<br>70 West Hedding Street<br>San Jose, CA 95110-1705 | Office of the District Attorney<br>County of El Dorado<br>515 Main Street<br>Placerville, CA 95667-5609 | Office of the District Attorney<br>County of Modoc<br>204 South Court Street<br>Alturas, CA 96101 | Office of the District Attorney<br>County of Santa Cruz<br>701 Ocean Street, #200<br>Santa Cruz, CA 95060-4011 |
| Office of the District Attorney<br>County of Fresno<br>2220 Tulare Street, #1000<br>Fresno, CA 93721-2107 | Office of the District Attorney<br>County of Mono<br>P.O. Box 617<br>Bridgeport, CA 93517-0617 | Office of the District Attorney<br>County of Shasta<br>1525 Court Street<br>Redding, CA 96001-1632 | Office of the District Attorney<br>County of Sierra<br>P.O. Box 457<br>Downieville, CA 95936-0457 |
| Office of the District Attorney<br>County of Riverside<br>4075 Main Street<br>Riverside, CA 92501-3707 | | | |

**ATTORNEY GENERAL COPY CONTAINS OFFICIAL INFORMATION PURSUANT TO EVIDENCE CODE § 1040**

Ropers Majeski Kohn & Bentley
A Professional Corporation
San Francisco

## PROOF OF SERVICE

I am a citizen of the United States. My business address is 333 Market Street, Suite 3150, San Francisco, CA 94105. I am employed in the County of San Francisco where this service occurs. I am over the age of 18 years, and not a party to the within cause. I am readily familiar with my employer's normal business practice for collection and processing of correspondence for ailing with the U.S. Postal Service, and that practice is that correspondence is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

On the date set forth below, following ordinary business practice, I served a true copy of the foregoing document(s) described as:

- **Sixty-Day Notice of Violation;**
- **Certificate of Merit;**
- **The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary**

☒ (BY MAIL) I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail at San Francisco, California.

Alan Bishara, President
Wendbay, Inc.
499 El Camino Real
San Bruno, CA 94066

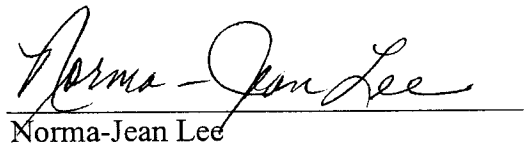
Wendy's Old Fashioned Hamburgers
499 El Camino Real
San Bruno, CA 94066

Edward G. Weil
Deputy Attorney General
Office of the attorney General
P.O. Box 70550
Oakland, CA 94612-0550

Offices of the City Attorneys and
Offices of the District Attorneys
on the attached Service List

☒ *(State)* I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 31, 2006, at San Francisco, California.



Norma-Jean Lee

SF/196509.7/NL2