# 60-DAY NOTICE OF VIOLATION

*SENT IN COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)*

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Date: October 13, 2006

To: Peter Tiger, President – Imperial Toy LLC
Peter Tiger, President – Imperial Toy Corporation
Warren F. Bryant, President – Longs Drug Stores Corporation
California Attorney General's Office;
District Attorney's Office for 58 Counties; and
City Attorneys for San Francisco, San Diego, San Jose, Sacramento and Los Angeles

From: Whitney R. Leeman, Ph. D.

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## I. INTRODUCTION

My name is Whitney R. Leeman. I hold a Doctor of Philosophy degree in Environmental Engineering. I am a citizen of the State of California acting in the interest of the general public. I seek to promote awareness of exposures to toxic chemicals found in products sold in California and, if possible, to improve human health by reducing hazardous substances contained in such items. This Notice is provided to the parties listed above pursuant to California Health & Safety Code §25249.6 *et seq.* ("Proposition 65"). As noted above, notice is being provided to the violators, Imperial Toy LLC, Imperial Toy Corporation and Longs Drug Stores Corporation (the "Violators"). The violations covered by this Notice consist of the product exposures, routes of exposures and types of harm potentially resulting from exposure to the toxic chemical ("listed chemical") identified below, as follows:

| | |
|---|---|
| Product Exposure: | See Section VI. Exhibit A |
| Listed Chemical: | Lead |
| Routes of Exposure: | Inhalation, Ingestion, Dermal, Ocular |
| Types of Harm: | Birth Defects and Other Reproductive Harm |

## II. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

The specific type of product that is causing consumer and occupational exposures in violation of Proposition 65, and that is covered by this Notice, is listed under "Product Category/Type" in Exhibit A in Section VI below. The Violators' sales of these cosmetic kit products have been occurring from at least October 13, 2005, to the present. 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. Without proper warnings regarding the toxic effects of exposures to the listed chemical resulting from use of the products, California citizens lack the information necessary to make informed decisions on whether and how to eliminate (or reduce) the risk of exposure to the toxic chemical from the reasonably foreseeable use of the products.

## A. CONSUMER PRODUCT EXPOSURE

California consumers who purchase or acquire the products are exposed to the listed chemical contained in the products. By way of example, but not limitation, exposures occur when California citizens sample, apply, wear, smooth, smear, blot, or utilize the cosmetic components (such as eye shadows, eyeliners and lipsticks (or lip glosses)) of the products on the face, neck, lips, nose and/or eyelids of themselves or others. These tasks cause consumers to be exposed directly to the listed chemical in the products. Additionally, exposures can occur indirectly through the routine touching of facial features (*i.e.* the lips, cheeks and eyes) with hands and fingers that become contaminated with the listed chemical, which is then transferred to the mouth through hand to mouth contact, including fingernail biting, eating, drinking and other frequent activities, for ingestion. People likely to be exposed include both children and adults.

## B. OCCUPATIONAL EXPOSURE

Similarly, California citizens use or otherwise handle the products as a part of their jobs and are, therefore, subject to occupational exposures to the listed chemical. Employees are exposed at any California business locations of the apparent manufacturer, distributor and retailer (and their agents, assigns and divisions) as well as all other California locations where the products, or the component parts thereof that include the listed chemical are, by way of example but not limitation, used, modeled, demonstrated, applied, arranged, displayed, cleaned, or otherwise handled. These tasks cause employee exposure directly and/or indirectly to the listed chemical through the routine touching of the parts or portions of the products containing readily available amounts of the listed chemical. Additionally, exposure can occur through the routine touching of facial features (*i.e.* the lips, cheeks and eyes) with hands and fingers that become contaminated with the listed chemical, which is then transferred to the mouth through hand to mouth contact, including nail biting, eating, and other frequent activities, for ingestion. These products are also used by sole proprietors and other persons in settings not covered by the Occupational Safety Health Act ("OSH Act"). This Notice alleges the violation of Proposition 65 with respect to occupational exposure governed by the California State Plan for Occupational Safety and Health. The State Plan incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997. This approval specifically placed certain conditions with regard to occupational exposures 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 contained in the general hazard communication requirement 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 California Attorney General.

## III. CONTACT INFORMATION

Please direct all questions concerning this notice to me at the following address:

Whitney R. Leeman, Ph.D.
c/o Laralei S. Paras
c/o D. Joshua Voorhees
Hirst & Chanler LLP
2560 Ninth Street,
Parker Plaza, Suite 214
Berkeley, CA 94710
Telephone: (510) 848-8880

## IV. PROPOSITION 65 INFORMATION

For general information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health Hazard Assessment's ("OEHHA") Proposition 65 Implementation Office at (916) 445-6900. For the Violators' reference, I have attached a copy of "Proposition 65: A Summary" which has been prepared by OEHHA.

## V. ADDITIONAL NOTICE INFORMATION

*THIS INFORMATION IS NOT REQUIRED TO BE PROVIDED UNDER CAL. CODE REGS., TITLE 22 §12903(b)(4).*

Identified below is a specific example of products recently purchased and witnessed as being available for purchase or use in California that is within the category or type of offending product covered by this Notice. Based on publicly available information, the retailers, distributors and/or manufacturers of the example within the category or type of product are also provided below. I believe and allege that the sale of the offending products also has occurred without the requisite Proposition 65 "clear and reasonable warnings" at other locations and 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 Violators and other retailers and distributors of the manufacturer.

| *Product** | *Retailer(s)* | *Manufacturer(s)/Distributor(s)* |
|---|---|---|
| Petite Miss Make-Up Set, No. 7017 (#0 76666 07017 6) | Longs Drug Stores Corporation Alameda County, Northern California | Imperial Toy LLC; Imperial Toy Corporation |

## VI. EXHIBIT A

| *Product Category/Type* | *Such As** | *Toxins* |
|---|---|---|
| Cosmetic Kits containing a combination of eye shadow, blush, and/or lipstick (or lip gloss) containing lead | Petite Miss Make-Up Set, No. 7017 (#0 76666 07017 6) | Lead |

*The specifically identified example of the type of product which is subject to this Notice is for the recipients' benefit to assist in their investigation of, among other things, the magnitude of potential exposure to the listed chemical from other items within the product category listed in Exhibit A. It is important to note that this example is not meant to be an exhaustive or comprehensive identification of each specific offending product of the type listed under "Product Category/Type" in Exhibit A. Further, it is this citizen's position that the alleged Violators are obligated to continue to conduct in good faith an investigation into other specific products within the type or category 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 are provided to California citizens prior to purchase.

# CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Laralei S. Paras, hereby declare:

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

2. I am the attorney for the noticing party.

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 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 violators 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 information identified in Health and 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.)

Dated: 10.13.2006

Laralei S. Paras

# PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury:

I am a citizen of the United States, over the age of 18 years, and not a party to the within action; my business address is 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, CA 94710.

On October 13, 2006, I served the following document:

**60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH HEALTH & SAFETY CODE §25249.7(d);**

**PROPOSITION 65: A SUMMARY;**

**CERTIFICATE OF MERIT; AND**

**CERTIFICATE OF MERIT ATTACHMENTS (SERVED ONLY ON THE ATTORNEY GENERAL)**

served on the Violators listed below via First Class Certified Mail through the United States Postal Service by placing a true and correct copy in a sealed envelope, addressed to the Violators and providing such envelope to a United States Postal Service Representative:

Peter Tiger, President
Imperial Toy LLC
2060 E. 7th Street
Los Angeles, CA 90021

Peter Tiger, President
Imperial Toy Corporation
2060 E. 7th Street
Los Angeles, CA 90021

Warren F. Bryant, President
Longs Drug Stores Corporation
141 North Civic Drive
Walnut Creek, CA 94596

as well as providing copies of the notice to the public enforcers by placing a true and correct copy in a sealed envelope, addressed to each party listed below, and served as follows:

| | |
|---|---|
| *Via 2nd Day Air Service by placing such envelope in a Federal Express Drop-Off Box:* | The Attorney General of the State of California; |
| *By placing each envelope in a United States Postal Service mailbox, first class postage prepaid:* | The District Attorney for Each of the 58 counties in California; and<br><br>The City Attorney for Los Angeles, San Diego, San Jose, San Francisco and Sacramento; |

*A list of addresses for each of these recipients is attached.*

Executed on October 13, 2006, at Berkeley, California.

Patrick Rafanan