

# SHUTE, MIHALY & WEINBERGER LLP

ATTORNEYS AT LAW

E. CLEMENT SHUTE, JR.\*  
MARK I. WEINBERGER (1948-2005)  
FRAN M. LAYTON  
RACHEL B. HOOPER  
ELLEN J. GARBER  
TAMARA S. GALANTER  
ANDREW W. SCHWARTZ  
ELLISON FOLK  
RICHARD S. TAYLOR  
WILLIAM J. WHITE  
ROBERT S. PERLMUTTER  
OSA L. WOLFF  
MATTHEW D. ZINN  
CATHERINE C. ENGBERG  
AMY J. BRICKER  
GABRIEL M.B. ROSS  
DEBORAH L. KEETH  
WINTER KING  
\*SENIOR COUNSEL

396 HAYES STREET  
SAN FRANCISCO, CALIFORNIA 94102  
TELEPHONE: (415) 552-7272  
FACSIMILE: (415) 552-5816  
WWW.SMVLAW.COM

KEVIN P. BUNDY  
ELENA K. SAXONHOUSE  
MICHELLE WILDE ANDERSON  
DOUG A. OBEGI  
LAUREL L. IMPETT, AICP  
CARMEN J. BORG, AICP  
URBAN PLANNERS

## ATTORNEY GENERAL COPY: CONTAINS OFFICIAL INFORMATION PER EVIDENCE CODE § 1040

September 20, 2007

### NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.

Dear Public Enforcement Agencies:

Shute, Mihaly & Weinberger LLP ("Firm") represents As You Sow ("AYS"), a non-profit foundation organized under California's Non-Profit Public Benefit Corporation Law. AYS is dedicated to, among other causes, the protection of the environment, the promotion of human health, the improvement of worker and consumer safety, and environmental education.

This firm and AYS have documented violations of California's Safe Drinking Water & Toxic Enforcement Act of 1986 ("Proposition 65"), codified at Health & Safety Code §25249.5 *et seq.* This letter serves to provide this Firm's and AYS' notification of these violations to the public enforcement agencies and to the violator. Pursuant to §25249.7(d) of the statute, this Firm intends to bring an enforcement action on behalf of AYS sixty (60) days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

A summary of the statute and its implementing regulations, which was prepared by the lead agency designated under the statute, is enclosed with the copy of this notice served upon the violator. The specific details of the violations that are the subject of this notice are provided below.

**Alleged violators.** The name of the violators covered by this notice are Toy Investments, Inc and Target Corporation.

**Chemicals.** These violations involve exposures to lead and lead compounds from the products listed below. On February 27, 1987, the State of California officially listed lead as a chemical known to cause reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

**Consumer products.** The product that is the subject of this notice is a children's harmonica that is imported, exported, manufactured, packaged, distributed, marketed, and/or sold

by Toy Investments, Inc. and Target Corporation.

<b>Product</b>	<b>Retailer</b>	<b>Manufacturer / Distributor</b>
<b>Harmonica (UPC 085761578067)</b>	<b>Target Corporation</b>	<b>Toy Investments, Inc.</b>

Although a specific model of harmonica is provided, this notice pertains to all models and all variations of the harmonica described in this notice.

**Route of exposure.** Use of the product identified in this notice results in human exposures to lead. The routes of exposure include direct ingestion when consumers, including children, place the product in their mouths; through ingestion via hand to mouth contact after consumers, including children, touch or handle the product; and dermal absorption directly through the skin when consumers, including children, touch or handle the product. No clear and reasonable warning is provided with this product regarding the carcinogenic or reproductive hazards of lead.

**Duration of violations.** Each of these ongoing violations has occurred on every day since at least September 20, 2006, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are removed from the products.

Pursuant to Title 11, C.C.R. § 3100, a certificate of merit is attached hereto.

In keeping with its public interest mission and to expeditiously rectify these ongoing violations of California law, AYS is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation. Please direct all communications regarding this notice to AYS' counsel in this matter:

**Ellison Folk**  
**Shute, Mihaly & Weinberger LLP**  
**396 Hayes Street**  
**San Francisco, CA 94102**  
**PH: 415.552.7272; Fax: 415.552.5816**  
**Email: [efolk@smwlaw.com](mailto:efolk@smwlaw.com)**

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Ellison Folk

Enclosures: Certificate of Merit  
Proof of Service

**CERTIFICATE OF MERIT**

(Notice of Proposition 65 Violation on Toy Investments, Inc. and Target Corp.)

I, Larry Fahn, declare:

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

2. I am the noticing party.

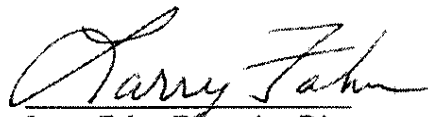
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the action.

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 that 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 §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: \_\_\_\_\_

9/19/07

  
Larry Fahn, Executive Director

Attachments (for Attorney General copy only)

## CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

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: 396 Hayes Street, San Francisco, CA 94102.

On September 20, 2007, I served the following documents:

- Notice of Violation of California Health & Safety Code § 25249.5 et seq.
- Certificate of Merit
- "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary"

on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below, and depositing it at a United States Postal Service Office for delivery by Certified Mail:

William Smith, President  
Toy Investments, Inc.  
5110 Frontage Road  
Auburn, WA 98001

Robert J. Ulrich, Chairman and Chief Executive Officer  
Target Corporation  
1000 Nicollet Mall TPN-0945  
Minneapolis, MN 55403

On September 20, 2007, I served the following document(s):

- Notice of Violation of California Health & Safety Code § 25249.5 et seq.
- Certificate of Merit, including Supporting Documentation Required by Title 11, C.C.R. § 3102

on the following party by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below, and depositing it at a United States Postal Service Office for delivery by Certified Mail:

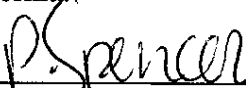
Attn: Ed Weil, Deputy Attorney General  
California Department of Justice  
P.O. Box 70550  
Oakland, CA 94612-0550

On September 20, 2007, I served the following document(s):

- Notice of Violation of California Health & Safety Code § 25249.5 et seq., including Exhibit A
- Certificate of Merit

on each of the parties on the service list attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the service list attached hereto, and depositing it at United States Postal Service mail box for delivery by First Class Mail.

Executed on September 20, 2007, at San Francisco, California

  
\_\_\_\_\_  
Patricia Spencer