

## NOTICE OF VIOLATION

### California Safe Drinking Water and Toxic Enforcement Act

Re: Lead In Children's Soft Vinyl Bags

October 10, 2007

This Notice of Violation is provided to you pursuant to and in compliance with California Health and Safety Code Section 25249.7(d).

- For general information regarding the California Safe Drinking Water and Toxic Enforcement Act, see the attached summary provided by the California EPA (copies not provided to public enforcement agencies).
- This Notice of Violation is provided by the Center for Environmental Health, 528 61<sup>st</sup> Street, Suite A, Oakland, CA 94609, (510) 594-9864. The Center for Environmental Health is a nonprofit corporation dedicated to protecting the environment, improving human health and supporting environmentally sound practices. Michael Green is the Executive Director of and a responsible individual within the Center for Environmental Health.

#### Description of Violation:

- The names and addresses of the violators are set forth on Exhibit 1 attached hereto.
- The violations have been occurring since at least October 10, 2004 and are continuing to this day.
- This Notice of Violation covers the "warning provision" of Proposition 65, which is found at California Health and Safety Code Section 25249.6.
- The names of the listed chemicals involved in these violations are lead and lead compounds ("Lead"). Exposures to Lead occur from use of the products identified in this notice.
- The specific type of products causing these violations is children's soft vinyl bags, including but not limited to lunch boxes, lunch bags, coolers and backpacks. The Lead is contained in these products. A non-exclusive example of this specific type of products is set forth on Exhibit 1 attached hereto.
- Description of Violations: Use of the products identified in this notice results in human exposures to Lead. The children's soft vinyl bags contain Lead. The route of exposure for the violations is direct ingestion when consumers (especially children) place items that have been stored in the products in their mouths; ingestion via hand to mouth contact after consumers touch or handle the products or items that have been stored in the products; and dermal absorption directly through the skin when consumers touch or handle the products or items that have been stored in the products. These exposures occur in homes, schools, workplaces and everywhere else throughout California where these products are touched or handled. No clear and reasonable warning is provided with these products regarding the carcinogenic or reproductive hazards of Lead.

#### Resolution of Noticed Claims:

- Based on the allegations set forth in this Notice, CEH intends to file a citizen enforcement lawsuit against each of the alleged violators unless such violators

enter into a binding written agreement to: (1) recall products already sold; (2) provide clear and reasonable warnings for products sold in the future or reformulate such products to eliminate the Lead exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health and Safety Code Section 25249.7(b). If the alleged violator is interested in resolving this dispute without resort to expensive and time-consuming litigation, please feel free to contact CEH through its counsel identified below. It should be noted that CEH cannot: (1) finalize any settlement until after the 60-day notice period has expired; nor (2) speak for the Attorney General or any District or City Attorney who received CEH's 60-day Notice. Therefore, while reaching an agreement with CEH will resolve its claims, such agreement may not satisfy the public prosecutors.

Please direct any inquiries regarding this notice to counsel for the Center for Environmental Health: Mark N. Todzo, Lexington Law Group, LLP, 1627 Irving Street, San Francisco, CA 94122, (415) 759-4111.

**CERTIFICATE OF MERIT**

**Health & Safety Code §25249.7(d)**

I, Mark N. Todzo, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the party identified in the notice has violated Health & Safety Code §25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney with the Lexington Law Group, LLP, and I represent the noticing party, the Center for Environmental Health ("CEH").
3. Members of my firm and 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 exposures to the listed chemical that is the subject of the action.
4. Based on the information obtained through those consultations, and on 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 the 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 §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: October 10, 2007



Mark N. Todzo  
Attorney for CENTER FOR  
ENVIRONMENTAL HEALTH

**EXHIBIT 1**

**Proposition 65 Notice of Violation by Center for Environmental Health**

**Re: Lead In Children's Soft Vinyl Bags**

**October 10, 2007**

<b>Name and Address of Noticed Party</b>	<b>Non-Exclusive Examples of the Products</b>	<b>Item Number or Other Description</b>
Sassafras Enterprises, Inc. 1622 W. Carroll Ave. Chicago, IL 60612	Penguin Pull-a-Long Backpack; Penguin Lunch Bag	Item No. 3520PN; Item No. 3521PN

## PROOF OF SERVICE BY MAIL

I declare that:

I am employed in San Francisco County, California. I am over the age of 18 years and not a party to the within cause; my business address is 1627 Irving Street, San Francisco, California 94122.

On October 10, 2007, I served true copies of the following documents:

**NOTICE OF VIOLATION OF CALIFORNIA SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT;**

**CERTIFICATE OF MERIT; and**

**THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY** (only sent to those on service list marked with an asterisks).

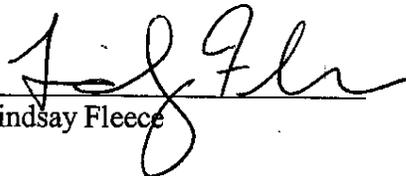
I placed a true copy of this paper in an envelope addressed to:

See Attached Service List.

I am readily familiar with my firm's practice for collection and processing of correspondence for mailing with the United States Postal Service, to wit, that correspondence will be deposited with the United States Postal Service this same day in the ordinary course of business. I placed the envelope containing the above-mentioned documents for collection and mailing on October 10, 2007, following the ordinary business practice.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on October 10, 2007, at San Francisco, California.

Signed:

  
Lindsay Fleece

## SERVICE LIST

District Attorney of Alameda County  
1225 Fallon Street, Room 900  
Oakland, CA 94612

District Attorney of Colusa County  
547 Market Street  
Colusa, CA 95932

District Attorney of Contra Costa  
County  
725 Court Street, Room 402  
Martinez, CA 94553

District Attorney of Alpine County  
P.O. Box 248  
Markleeville, CA 96120

District Attorney of Del Norte  
County  
450 H Street, Ste 171  
Crescent City, CA 95531

District Attorney of Amador County  
708 Court Street, #202  
Jackson, CA 95642

District Attorney of Butte County  
25 County Center Drive  
Oroville, CA 95965

District Attorney of El Dorado  
County  
515 Main Street  
Placerville, CA 95667

District Attorney of Calaveras  
County  
891 Mountain Ranch Road  
San Andreas, CA 95249

District Attorney of Fresno County  
2220 Tulare Street, #1000  
Fresno, CA 93721

District Attorney of Glenn County  
P.O. Box 430  
Willows, CA 95988

District Attorney of Kings County  
1400 West Lacey  
Hanford, CA 93230

District Attorney of Lake County  
255 N. Forbes Street  
Lakeport, CA 95453

District Attorney of Humboldt  
County  
825 5th Street  
Eureka, CA 95501

District Attorney of Imperial County  
939 Main Street  
El Centro, CA 92243

District Attorney of Lassen County  
220 S. Lassen St., Ste 8  
Susanville, CA 96130

District Attorney of Inyo County  
P.O. Drawer D  
Independence, CA 93526

District Attorney of Los Angeles  
County  
210 W. Temple Street, Room 345  
Los Angeles, CA 90012

District Attorney of Madera County  
209 West Yosemite Avenue  
Madera, CA 93637

District Attorney of Kern County  
1215 Truxtun Avenue  
Bakersfield, CA 93301

District Attorney of Marin County  
3501 Civic Center Dr., Room 183  
San Rafael, CA 94903

District Attorney of Mono County  
P.O. Box 617  
Bridgeport, CA 93517

District Attorney of Mariposa  
County  
P.O. Box 730  
Mariposa, CA 95338

District Attorney of Monterey  
County  
PO Box 1131  
Salinas, CA 93901

District Attorney of Mendocino  
County  
P.O. Box 1000  
Ukiah, CA 95482

District Attorney of Napa County  
931 Parkway Mall  
Napa, CA 94559

District Attorney of Merced  
County  
2222 "M" Street  
Merced, CA 95340

District Attorney of Nevada  
County  
201 Church St., Suite 8  
Nevada City, CA 95959

District Attorney of Orange  
County  
401 Civic Ctr Drive West  
Santa Ana, CA 92701

District Attorney of Modoc  
County  
204 S Court Street  
Alturas, CA 96101-4020

District Attorney of Placer  
County  
11562 "B" Avenue  
Auburn, CA 95603

District Attorney of San  
Bernardino County  
316 N. Mountain View Avenue  
San Bernardino, CA 92415-0004

District Attorney of Plumas  
County  
520 Main Street, Room 404  
Quincy, CA 95971

District Attorney of San Diego  
County  
330 West Broadway, Suite 1320  
San Diego, CA 92112

District Attorney of Riverside  
County  
4075 Main Street, 1st Floor  
Riverside, CA 92501

District Attorney of San  
Francisco County  
850 Bryant Street, Rm 325  
San Francisco, CA 94103

District Attorney of Sacramento  
County  
901 "G" Street  
Sacramento, CA 95814

District Attorney of San Joaquin County P.O. Box 990 Stockton, CA 95201	District Attorney of Sutter County 446 Second Street Yuba City, CA 95991	Steven Schwab* President Sassafras Enterprises, Inc. 1622 W. Carroll Ave. Chicago, IL 60612
District Attorney of San Luis Obispo County 1050 Monterey St, Room 450 San Luis Obispo, CA 93408	District Attorney of Ventura County 800 South Victoria Ave Ventura, CA 93009	
District Attorney of San Benito County 419 Fourth Street, 2 <sup>nd</sup> Floor Hollister, CA 95023	District Attorney of Tehama County P.O. Box 519 Red Bluff, CA 96080	
District Attorney of San Mateo County 400 County Ctr, 3 <sup>rd</sup> Fl Redwood City, CA 94063	District Attorney of Yolo County 301 Second Street Woodland, CA 95695	
District Attorney of Sierra County Courthouse, P.O. Box 457 Downieville, CA 95936	District Attorney of Trinity County P.O. Box 1310 Weaverville, CA 96093	
District Attorney of Santa Barbara County 1105 Santa Barbara Street Santa Barbara, CA 93101	District Attorney of Yuba County 215 Fifth Street Marysville, CA 95901	
District Attorney of Siskiyou County P.O. Box 986 Yreka, CA 96097	District Attorney of Tulare County 221 S. Mooney Ave, Room 224 Visalia, CA 93291	
District Attorney of Solano County 600 Union Avenue Fairfield, CA 94533	District Attorney of Tuolumne County 2 South Green Sonora, CA 95370	
District Attorney of Santa Clara County 70 West Hedding Street San Jose, CA 95110	San Jose City Attorney's Office 151 West Mission Street San Jose, CA 95110	
District Attorney of Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95061	Los Angeles City Attorney's Office Room 1800, City Hall East 200 N. Main Street Los Angeles, CA 90012	
District Attorney of Sonoma County 600 Administration Drive, Room 212J Santa Rosa, CA 95403	San Diego City Attorney's Office 1200 3rd Avenue, 12th Floor San Diego, CA 92101	
District Attorney of Shasta County 1525 Court Street, Third Floor Redding, CA 96001-1632	San Francisco City Attorney's Office City Hall, Room 234 San Francisco, CA 94102	
District Attorney of Stanislaus County 800 11 <sup>th</sup> Street, Room 200 Modesto, CA 95353	California Attorney General's Office Attention: Proposition 65 Coordinator 1515 Clay Street, Suite 2000 P.O. Box 7550 Oakland, CA 94612	