

## NOTICE OF VIOLATION

### California Safe Drinking Water and Toxic Enforcement Act

Re: Lead in Toys

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 ("CEH"), 528 61<sup>st</sup> Street, Suite A, Oakland, CA 94609, (510) 594-9864. CEH 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 CEH.

#### Description of Violation:

- The name and address of the violator is Marvel Entertainment, Inc., 417 5<sup>th</sup> Avenue, New York, NY 10016.
- 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 this violation are lead and lead compounds ("Lead"). Exposures to Lead occur from use of the products identified in this notice.
- The specific type of product causing this violation is toys. The toys are composed of, contain, and are decorated with paint and/or polyvinyl chloride containing Lead. A non-exclusive example of this specific type of product is Birthday Curious George with Exclusive Activity Book, UPC No. 8-83199-90253-5, Item No. 90253.
- Description of Exposure: Use of the products identified in this notice results in human exposures to Lead. Lead is contained in the toys, and in the paint decorating the exterior of the toys. The routes of exposure for the violation include ingestion via hand to mouth contact after consumers, including children, touch or handle the product; direct ingestion when consumers, including children, place the product in their mouths; and dermal absorption directly through the skin when consumers, including children, touch or handle the product. These exposures occur in homes, workplaces and everywhere else throughout California where the products are handled or used. No clear and reasonable warning is provided with this product 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 the violator named herein unless the alleged violator enters into a binding written agreement to remedy the violations alleged herein by: (1) recalling products already sold; (2) reformulating such products to eliminate the Lead exposure; (3) paying an appropriate civil penalty based on the factors enumerated in California Health and Safety Code Section 25249.7(b); and (4) creating an open and judicially enforceable testing program approved by CEH to ensure that toys sold in the future do not require a warning under Proposition 65. If the alleged violator is interested in resolving this dispute without resort to 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 CEH and its counsel Eric S. Somers at Lexington Law Group, LLP, 1627 Irving Street, San Francisco, CA 94122, (415) 759-4111.

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

I, Eric S. Somers, 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 have 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.

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 violators 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.

October 10, 2007



Eric S. Somers  
Attorney for CENTER FOR  
ENVIRONMENTAL HEALTH

**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).

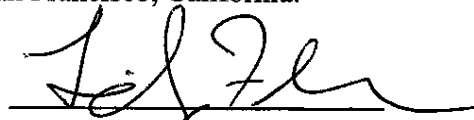
I placed a true copy of this paper in an envelope addressed to:

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  
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Crescent City, CA 95531

District Attorney of Amador County  
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District Attorney of Butte County  
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District Attorney of Calaveras  
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District Attorney of Kings County  
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Susanville, CA 96130

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Independence, CA 93526

District Attorney of Los Angeles  
County  
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Los Angeles, CA 90012

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Madera, CA 93637

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3501 Civic Center Dr., Room 130  
San Rafael, CA 94903

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County  
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Napa, CA 94559

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San Bernardino, CA 92415-0004

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4075 Main Street, 1st Floor  
Riverside, CA 92501

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850 Bryant Street, Rm 325  
San Francisco, CA 94103

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Sacramento, CA 95814

District Attorney of San Joaquin  
County  
P.O. Box 990  
Stockton, CA 95201

District Attorney of San Luis  
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1050 Monterey St, Room 450  
San Luis Obispo, CA 93408

District Attorney of San Benito  
County  
419 Fourth Street, 2<sup>nd</sup> Floor  
Hollister, CA 95023

District Attorney of San Mateo  
County  
400 County Ctr, 3<sup>rd</sup> Fl  
Redwood City, CA 94063

District Attorney of Sierra County  
Courthouse, P.O. Box 457  
Downieville, CA 95936

District Attorney of Yuba County  
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Marysville, CA 95901

District Attorney of Santa Barbara  
County  
1105 Santa Barbara Street  
Santa Barbara, CA 93101

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221 S. Mooney Ave, Room 224  
Visalia, CA 93291

District Attorney of Siskiyou County  
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Sonora, CA 95370

District Attorney of Solano County  
600 Union Avenue  
Fairfield, CA 94533

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151 West Mission Street  
San Jose, CA 95110

District Attorney of Santa Clara  
County  
70 West Hedding Street  
San Jose, CA 95110

Los Angeles City Attorney's Office  
Room 1800, City Hall East  
200 N. Main Street  
Los Angeles, CA 90012

District Attorney of Santa Cruz  
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701 Ocean Street, Room 200  
Santa Cruz, CA 95061

San Diego City Attorney's Office  
1200 3rd Avenue, Suite 1620  
San Diego, CA 92101

District Attorney of Sonoma County  
600 Administration Drive, Room  
212J  
Santa Rosa, CA 95403

San Francisco City Attorney's Office  
City Hall, Room 234  
San Francisco, CA 94102

District Attorney of Shasta County  
1525 Court Street, Third Floor  
Redding, CA 96001-1632

California Attorney General's Office  
Attention: Proposition 65 Coordinator  
1515 Clay Street, Suite 2000  
P.O. Box 7550  
Oakland, CA 94612

District Attorney of Stanislaus  
County  
800 11<sup>th</sup> Street, Room 200  
Modesto, CA 95354

Isaac Perlmutter\*  
Chief Executive Officer  
Marvel Entertainment, Inc.  
417 5<sup>th</sup> Avenue  
New York, NY 10016

District Attorney of Sutter County  
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Yuba City, CA 95991

District Attorney of Ventura County  
800 South Victoria Ave  
Ventura, CA 93009

District Attorney of Tehama County  
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Red Bluff, CA 96080

District Attorney of Yolo County  
301 Second Street  
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District Attorney of Trinity County  
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