

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 61st 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 names and addresses of the violators are set forth in 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 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 products causing this violation is toys. The toys are composed of, contain, and/or are decorated with paint and/or polyvinyl chloride containing Lead. Non-exclusive examples of this specific type of products are identified in Exhibit 1 attached hereto.
- 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 violators named herein unless the alleged

violators enter 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.

EXHIBIT 1
List of Violators and Non-Exclusive Examples of the Products
October 10, 2007 Notice of Violation
Re: Lead in Toys

Names and Addresses of the Violators	Non-Exclusive Examples of the Products	SKU Number or Other Identifying Information
Costco Wholesale Corporation 999 Lake Drive Issaquah, WA 98027	Red Skarloey Engine	Item No. LC99070; Sold with DVDs as Items Nos. 204475, 166501, and 119197
KB Toys, Inc. 100 West St. Pittsfield, MA 01201 KB Toys Retail, Inc. 100 West St. Pittsfield, MA 01201	10-in-1 Activity Learning Carts	UPC No. 834162002127
Kids II, Inc. 555 N. Point Center E. Suite 600 Alpharetta, GA 30022	Baby Einstein Discover & Play Color Blocks	Model 30726
Kmart Corporation 3100 W. Big Beaver Rd. Troy, MI 48084	Red Skarloey Engine	Item No. LC99070
Michaels Stores, Inc. 8000 Bent Branch Drive Irving, TX 75063	Knapford Bridge Figure 8 Set	Item No. LC99557
RC2 Corporation 111 W. 22 nd Street, Suite 320 Oak Brook, IL 60532	Red Skarloey Engine	Item No. LC99070
Sears Holdings Corporation 3333 Beverly Road Hoffman Estates, IL 60179 Sears, Roebuck and Co. 3333 Beverly Road Hoffman Estates, IL 60179	Red Skarloey Engine	Item No. LC99070
Target Corporation 1000 Nicollet Mall Minneapolis, MN 55403	Happy Giddy Gardening Tools	N/A

Names and Addresses of the Violators	Non-Exclusive Examples of the Products	SKU Number or Other Identifying Information
Toys "R" Us One Geoffrey Way Wayne, NJ 07470-2030 Toys "R" Us-Delaware, Inc. One Geoffrey Way Wayne, NJ 07470-2030	Thomas Battery Operated Track Rider (Red Wooden Coal Car)	Item No. 35524
Wal-Mart Stores, Inc. 702 S.W., 8 th Street Bentonville, AR 72716	Baby Einstein Discover & Play Color Blocks	Model 30726

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 parties 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).

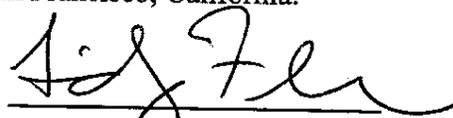
I placed a true copy of this paper in an envelope addressed to:

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 Imperial County 939 W. Main Street El Centro, CA 92243	District Attorney of Modoc County PO Box 1171 Alturas, CA 96101-4020
District Attorney of Colusa County 547 Market Street Colusa, CA 95932	District Attorney of Lassen County 220 S. Lassen St., Ste 8 Susanville, CA 96130	District Attorney of Placer County 11562 "B" Avenue Auburn, CA 95603
District Attorney of Contra Costa County 725 Court Street, Room 402 Martinez, CA 94553	District Attorney of Inyo County P.O. Drawer D Independence, CA 93526	District Attorney of San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004
District Attorney of Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney of Los Angeles County 210 W. Temple Street, Room 345 Los Angeles, CA 90012	District Attorney of Plumas County 520 Main Street, Room 404 Quincy, CA 95971
District Attorney of Del Norte County 450 H Street, Ste 171 Crescent City, CA 95531	District Attorney of Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney of San Diego County 330 West Broadway, Suite 1320 San Diego, CA 92101
District Attorney of Amador County 708 Court Street, #202 Jackson, CA 95642	District Attorney of Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney of Riverside County 4075 Main Street, 1st Floor Riverside, CA 92501
District Attorney of Butte County 25 County Center Drive Oroville, CA 95965	District Attorney of Marin County 3501 Civic Center Dr., Room 130 San Rafael, CA 94903	District Attorney of San Francisco County 850 Bryant Street, Rm 325 San Francisco, CA 94103
District Attorney of El Dorado County 515 Main Street Placerville, CA 95667	District Attorney of Mono County P.O. Box 617 Bridgeport, CA 93517	District Attorney of Sacramento County 901 "G" Street Sacramento, CA 95814
District Attorney of Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney of Mariposa County P.O. Box 730 Mariposa, CA 95338	District Attorney of San Joaquin County P.O. Box 990 Stockton, CA 95201
District Attorney of Fresno County 2220 Tulare Street, #1000 Fresno, CA 93721	District Attorney of Monterey County PO Box 1131 Salinas, CA 93902	District Attorney of San Luis Obispo County 1050 Monterey St, Room 450 San Luis Obispo, CA 93408
District Attorney of Glenn County P.O. Box 430 Willows, CA 95988	District Attorney of Mendocino County P.O. Box 1000 Ukiah, CA 95482	District Attorney of San Benito County 419 Fourth Street, 2 nd Floor Hollister, CA 95023
District Attorney of Kings County 1400 West Lacey Hanford, CA 93230	District Attorney of Napa County 931 Parkway Mall Napa, CA 94559	District Attorney of San Mateo County 400 County Ctr, 3 rd Fl Redwood City, CA 94063
District Attorney of Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney of Merced County 2222 "M" Street Merced, CA 95340	
District Attorney of Humboldt County 825 5th Street Eureka, CA 95501	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 92702	

District Attorney of Sierra County Courthouse, P.O. Box 457 Downieville, CA 95936	District Attorney of Yuba County 215 Fifth Street Marysville, CA 95901	Aylwin B. Lewis* Chief Executive Officer Kmart Corporation 3100 W. Big Beaver Rd. Troy, MI 48084
District Attorney of Santa Barbara County 1105 Santa Barbara Street Santa Barbara, CA 93101	District Attorney of Tulare County 221 S. Mooney Ave, Room 224 Visalia, CA 93291	Jeffrey N. Boyer* Gregory A. Sandfort Co-Presidents Michaels Stores, Inc. 8000 Bent Branch Drive Irving, TX 75063
District Attorney of Siskiyou County P.O. Box 986 Yreka, CA 96097	District Attorney of Tuolumne County 2 South Green Sonora, CA 95370	Curtis W. Stoelting* Chief Executive Officer RC2 Corporation 111 W. 22 nd Street, Suite 320 Oak Brook, IL 60532
District Attorney of Solano County 600 Union Avenue Fairfield, CA 94533	San Jose City Attorney's Office 151 West Mission Street San Jose, CA 95110	Aylwin B. Lewis* Chief Executive Officer Sears Holdings Corporation 3333 Beverly Road Hoffman Estates, IL 60179
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	Aylwin B. Lewis* Chief Executive Officer Sears, Roebuck and Co. 3333 Beverly Road Hoffman Estates, IL 60179
District Attorney of Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95061	San Diego City Attorney's Office 1200 3rd Avenue, Suite 1620 San Diego, CA 92101	Robert J. Ulrich* Chief Executive Officer Target Corporation 1000 Nicollet Mall Minneapolis, MN 55403
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	Gerald L. Storch* Chief Executive Officer Toys "R" Us, Inc. One Geoffrey Way Wayne, NJ 07470-2030
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	Gerald L. Storch* Chief Executive Officer Toys "R" Us-Delaware, Inc. One Geoffrey Way Wayne, NJ 07470-2030
District Attorney of Stanislaus County 800 11 th Street, Room 200 Modesto, CA 95354	James D. Sinegal* Chief Executive Officer Costco Wholesale Corporation 999 Lake Drive Issaquah, WA 98027	H. Lee Scott, Jr.* Chief Executive Officer Wal-Mart Stores, Inc. 702 S.W., 8 th Street Bentonville, AR 72716
District Attorney of Sutter County 446 Second Street Yuba City, CA 95991	Gregory R. Staley* President KB Toys, Inc. 100 West St. Pittsfield, MA 01201	
District Attorney of Ventura County 800 South Victoria Ave Ventura, CA 93009	Gregory R. Staley* President KB Toys Retail, Inc. 100 West St. Pittsfield, MA 01201	
District Attorney of Tehama County P.O. Box 519 Red Bluff, CA 96080	Ryan Gunnigle* President and Chief Executive Officer Kids II, Inc. 555 N. Point Center E. Suite 600 Alpharetta, GA 30022	
District Attorney of Yolo County 301 Second Street Woodland, CA 95695		
District Attorney of Trinity County P.O. Box 310 Weaverville, CA 96093		