

## NOTICE OF VIOLATION

### California Safe Drinking Water and Toxic Enforcement Act

Re: Lead In Backpacks

December 6, 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 December 6, 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 backpacks. The products are made of and contain Lead. Non-exclusive examples of this specific type of products are 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 backpacks 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, handle or wear 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.

#### Rescission 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 binding written agreements 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 violators are 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.

**EXHIBIT 1**  
**December 6, 2007 Notice of Violation**  
**Re: Lead in Backpacks**

Names and Addresses of Responsible Parties	Non-Exclusive Examples of the Products	Item or SKU # or Further Description
<b>A.D. Sutton &amp; Sons, Inc.</b> 20 W. 33 <sup>rd</sup> St. New York, NY 10001	American Princess Backpack	UPC #0-89305-45487-9
<b>Legent International Ltd.</b> 302 N. Water St. Newburgh, NY 12550	Mudd Butterfly & Jean Backpack	Retail ID #790460158686; Style # K683M(MKM-406-2192TRU)
<b>Accessory Network Group, Inc.</b> 350 5 <sup>th</sup> Avenue, 4 <sup>th</sup> Floor New York, NY 10118	1. Queen of the Universe Backpack  2. Superman Backpack	1. UPC #0-93177-52439-4; Item No. BGK000180/59; RN #87429  2. Retail ID #069030066

**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 parties identified in the notice have violated Health & Safety Code §25249.6 by failing to provide clear and reasonable warnings.

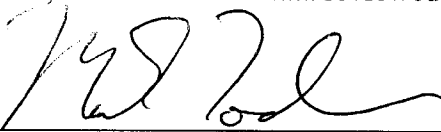
2. I am an attorney with the Lexington Law Group, LLP, and I represent the noticing party, the Center for Environmental Health (“CEH”).

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.

December 6, 2007



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Mark N. Todzo  
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 December 6, 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).

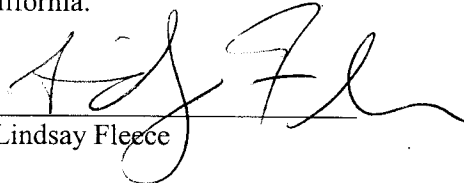
I placed a true copy of this paper in an envelope addressed to:

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 December 6, 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 December 6, 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  
627 Ferry Street  
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District Attorney of Alpine County  
P.O. Box 248  
Markleeville, CA 96120

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

District Attorney of Amador County  
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District Attorney of El Dorado  
County  
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District Attorney of Kern County  
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Bakersfield, CA 93301

District Attorney of Marin County  
3501 Civic Center Dr., Room 130  
San Rafael, CA 94903

District Attorney of Mono County  
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Bridgeport, CA 93517

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P.O. Box 730  
Mariposa, CA 95338

District Attorney of Monterey  
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Salinas, CA 93901

District Attorney of Mendocino  
County  
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Ukiah, CA 95482

District Attorney of Napa County  
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Napa, CA 94559

District Attorney of Merced  
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Merced, CA 95340

District Attorney of Nevada  
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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

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 92101

District Attorney of Riverside  
County  
4075 Main Street  
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 San Luis Obispo  
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1050 Monterey St, Room 450  
San Luis Obispo, CA 93408

District Attorney of San Benito  
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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  
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Santa Barbara, CA 93101

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Fairfield, CA 94533

District Attorney of Santa Clara  
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San Jose, CA 95110

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Santa Cruz, CA 95060

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Santa Rosa, CA 95403

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Redding, CA 96001-1632

District Attorney of Stanislaus  
County  
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Modesto, CA 95353

District Attorney of Sutter County  
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Yuba City, CA 95991

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Ventura, CA 93009

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District Attorney of Yolo County  
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District Attorney of Yuba County  
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221 S. Mooney Ave, Room 224  
Visalia, CA 93291

District Attorney of Tuolumne  
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Sonora, CA 95370

San Jose City Attorney's Office  
200 East Santa Clara Street  
San Jose, CA 95113

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

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

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

California Attorney General's  
Office  
Attention: Proposition 65  
Coordinator  
1515 Clay Street, Suite 2000  
P.O. Box 70550  
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David Sutton\*  
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