

## NOTICE OF VIOLATION

California Safe Drinking Water and Toxic Enforcement Act

Lead in Picture Frames

Wal-Mart Stores, Inc.

February 9, 2009

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"), 2201 Broadway, Suite 302, Oakland, CA 94612-3017, (510) 655-3900. 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:

- Violators: The name and address of the violator is Wal-Mart Stores, Inc., 702 S.W. 8<sup>th</sup> Street, Bentonville, AR 72716-8611.
- Time Period of Exposure: The violations have been occurring since at least February 9, 2006, and are ongoing.
- Provision of Proposition 65: This Notice of Violation covers the "warning provision" of Proposition 65, which is found at California Health and Safety Code Section 25249.6.
- Chemicals Involved: 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.
- Type of Product: The specific type of product causing this violation is picture frames. The picture frames subject to this Notice are made of and contain Lead. A non-exclusive example of this specific type of product is the Santa Claus 4x6 Photo Frame, UPC #009658769152.
- Description of Exposures: The picture frames that are the subject of this Notice contain Lead. Lead is used in various components of the picture frames. For example, the frames contain Lead in the paint on their decorative components. Use of these picture frames result in consumer exposures to Lead. The route of exposure for the violations is ingestion via hand to mouth contact, dermal absorption directly through the skin, and inhalation of dust containing Lead. These exposures take place when consumers use, install, clean, service or otherwise touch or handle the products. These exposures occur in homes, schools, workplaces and everywhere else in California where these products are used. 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 the violator named herein unless such 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; and (3) paying 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 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 Howard Hirsch 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, Howard Hirsch, 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.

Dated: February 9, 2009



Howard Hirsch  
Attorney for CENTER FOR  
ENVIRONMENTAL HEALTH

## PROOF OF SERVICE BY MAIL

I declare that:

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

On February 9, 2009, 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).

On this date, I deposited fully prepaid and sealed envelopes containing the above-mentioned documents with the United States Postal Service, addressed to the following individuals:

***Please see attached service list.***

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on February 9, 2009, at San Francisco, California.

Signed: \_\_\_\_\_  
Jennie Romer

## SERVICE LIST

District Attorney of Alameda County 1225 Fallon Street, Room 900 Oakland, CA 94612	District Attorney of Lassen County 220 S. Lassen St., Ste 8 Susanville, CA 96130	District Attorney of Modoc County 204 S Court Street Alturas, CA 96101-4020
District Attorney of Colusa County 547 Market Street Colusa, CA 95932	District Attorney of Inyo County P.O. Drawer D Independence, CA 93526	District Attorney of Placer County 11562 "B" Avenue Auburn, CA 95603
District Attorney of Contra Costa County 627 Ferry Street Martinez, CA 94553	District Attorney of Los Angeles County 210 W. Temple Street, Room 345 Los Angeles, CA 90012	District Attorney of San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415
District Attorney of Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney of Madera County 209 West Yosemite Avenue Madera, CA 93637	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 Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	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 Marin County 3501 Civic Center Dr., Room 130 San Rafael, CA 94903	District Attorney of Riverside County 4075 Main Street Riverside, CA 92501
District Attorney of Butte County 25 County Center Drive Oroville, CA 95965	District Attorney of Mono County P.O. Box 617 Bridgeport, CA 93517	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 Mariposa County P.O. Box 730 Mariposa, CA 95338	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 Monterey County 230 Church Street, Bldg. 2 Salinas, CA 93901	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 Mendocino County P.O. Box 1000 Ukiah, CA 95482	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 Napa County 931 Parkway Mall Napa, CA 94559	District Attorney of San Benito County 419 Fourth Street, 2 <sup>nd</sup> Floor Hollister, CA 95023
District Attorney of Kings County 1400 West Lacey Hanford, CA 93230	District Attorney of Merced County 2222 "M" Street Merced, CA 95340	District Attorney of San Mateo County 400 County Ctr, 3 <sup>rd</sup> Fl Redwood City, CA 94063
District Attorney of Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney of Nevada County 201 Church St., Suite 8 Nevada City, CA 95959	
District Attorney of Humboldt County 825 5th Street Eureka, CA 95501	District Attorney of Orange County 401 Civic Ctr Drive West Santa Ana, CA 92701	
District Attorney of Imperial County 939 Main Street El Centro, CA 92243		

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

District Attorney of Yuba County  
215 Fifth Street  
Marysville, CA 95901

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

District Attorney of Siskiyou County  
P.O. Box 986  
Yreka, CA 96097

District Attorney of Tuolumne  
County  
423 No. Washington Street  
Sonora, CA 95370

District Attorney of Solano County  
675 Texas Street, Suite 4500  
Fairfield, CA 94533

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

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

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

District Attorney of Santa Cruz  
County  
701 Ocean Street, Room 200  
Santa Cruz, CA 95060

San Diego City Attorney's Office  
1200 3rd Avenue #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

District Attorney of Stanislaus County  
800 11<sup>th</sup> Street, Room 200  
PO BOX 442  
Modesto, CA 95353

1515 Clay Street, Suite 2000  
P.O. Box 70550  
Oakland, CA 94612

District Attorney of Sutter County  
446 Second Street  
Yuba City, CA 95991

Mike Duke\*  
President and CEO  
Wal-Mart Stores, Inc.  
702 S.W. 8<sup>th</sup> Street  
Bentonville, AR 72716-8611

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

District Attorney of Tehama County  
P.O. Box 519  
Red Bluff, CA 96080

District Attorney of Yolo County  
301 Second Street  
Woodland, CA 95695

District Attorney of Trinity County  
P.O. Box 310  
11 Court St.  
Weaverville, CA 96093