

August 5, 2010

**BY U.S. FIRST CLASS MAIL**

Current CEO or President  
Beech-Nut Nutrition Corporation  
100 South Fourth Street, Suite 1010  
St. Louis, MO 63102

Current CEO or President  
Earth's Best, Inc.  
P.O. Box 57  
Pittsburgh, PA 15230

Current CEO or President  
Gerber Products Company  
12 Vreeland Road  
Florham Park, NJ 07932-0697

Current CEO or President  
Lucerne Foods, Inc.  
Tax Division  
5918 Stoneridge Mall Rd  
Pleasanton, CA 94588-3229

Current CEO or President  
Organic Baby, a BlueMarble Brand  
313 Iron Horse Way  
Providence, RI 02908

Current CEO or President  
Lucky's  
C/o Save Mart Supermarkets  
P.O. Box 4278  
Modesto, CA 95352

Current CEO or President  
Babies "R" Us  
1 Geoffrey Way  
Wayne, NJ 07470

Current CEO or President  
Safeway, Inc.  
5918 Stoneridge Mall Road  
Pleasanton, CA 94588

Current CEO or President  
Whole Foods Market California, Inc.  
550 Bowie Street  
Austin, TX 78703

**Re: Notice of Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65), Section 25249.6 of the California Health and Safety Code, for Exposing Consumers to Lead From the Following Foods (For Babies and/or Toddlers): Packaged Carrots, Packaged Pears, Packaged Foods That Include Pears, Packaged Apples, Packaged Foods That Include Apples, Packaged Peaches, Packaged Foods That Include Peaches, And Packaged Sweet Potatoes.**

Dear Sir/Madam:

The Environmental Law Foundation ("ELF") is a California non-profit organization dedicated to the preservation and enhancement of human health and the environment. ELF has a



long-standing interest in reducing health hazards to the public posed by toxic chemicals and protecting the public from harmful substances.

This letter constitutes notice that the entities identified in Exhibit A have violated and continue to violate provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code sections 25249.5 et seq. Specifically, these entities have violated and continue to violate the warning requirement at section 25249.6 of the California Health and Safety Code, which provides, "No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual..."

The list of entities subject to this Notice is attached as Exhibit A. Consumer food products sold by these entities contain lead, a chemical known to the State to cause reproductive toxicity and cancer. On each and every day from August 5, 2009 through the present, these entities have exposed and continue to expose consumers of their food products to lead. Exposure to the consumers has occurred through ingestion of the food products. The categories of food products that are the subject of this Notice are the following foods for babies and/or toddlers: packaged carrots, packaged pears, packaged foods that include pears, packaged apples, packaged foods that include apples, packaged peaches, packaged foods that include peaches, and packaged sweet potatoes. Specific, non-exclusive examples of food products that are the subject of this Notice are identified in the document attached as Exhibit B.

Because lead is a chemical listed in Proposition 65 as a human carcinogen and a reproductive toxin, pursuant to Health and Safety Code § 25249.6 the entities in Exhibit A were, and are, required to provide clear and reasonable warnings to all consumers of food products before exposing them to lead. Pursuant to Health and Safety Code section 25249.7(d), ELF intends to bring suit in the public interest against the entities in Exhibit A sixty days hereafter to correct the violation occasioned by the failure to warn all consumers of the exposure to lead.

Pursuant to 27 California Code of Regulations § 25903(b)(1), attached is a copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary," a summary of Proposition 65 prepared by the Office of Environmental Health Hazard Assessment of the California Environmental Protection Agency.

Pursuant to Health and Safety Code § 25249.7(d)(1), the undersigned hereby includes with the copy of this notice to the Attorney General a confidential Certificate of Merit.

While violations are occurring throughout the State of California, the noticing parties are unable to know for certain if violations are occurring in all of the 58 counties in California. Therefore, pursuant to 27 California Code of Regulations § 25903(c)(3), the noticing parties are providing this notice to the district attorney for each of the 58 counties in California. Further, the noticing parties provide this notice to the California Attorney General and the city attorneys for the cities of Los Angeles, San Diego, San Francisco and San Jose.

ELF is located at: 1736 Franklin, 9th Floor, Oakland, California 94612, telephone (510) 208-4555. The president of ELF is James Wheaton. ELF is represented in this matter by the law firms of



Baron & Budd, P.C. and the Law Offices of April Strauss. All communications concerning this matter should be directed to:

Laura Baughman  
Baron & Budd, P.C.  
3102 Oak Lawn Ave., Suite 1100  
Dallas, Texas 75219  
(214) 521-3605.

Sincerely,

BARON & BUDD, P.C.

Laura J. Baughman  
Thomas Sims  
Attorneys for ELF

Enclosures

cc: Attorney General of California  
(with attached confidential factual information supporting Certificate of Merit)  
Los Angeles City Attorney  
San Diego City Attorney  
City Attorney of San Francisco  
San Jose City Attorney  
District Attorneys for California's 58 Counties  
(see attached certificate of service)

**Exhibit A**

Current CEO or President  
Beech-Nut Nutrition Corporation  
100 South Fourth Street, Suite 1010  
St. Louis, MO 63102

Current CEO or President  
Gerber Products Company  
12 Vreeland Road  
Florham Park, NJ 07932-0697

Current CEO or President  
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550 Bowie Street  
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P.O. Box 57  
Pittsburgh, PA 15230

Current CEO or President  
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Tax Division  
5918 Stoneridge Mall Rd  
Pleasanton, CA 94588-3229

Current CEO or President  
Lucky's  
C/o Save Mart Supermarkets  
P.O. Box 4278  
Modesto, CA 95352

Current CEO or President  
Safeway, Inc.  
5918 Stoneridge Mall Road  
Pleasanton, CA 94588

## EXHIBIT B

### **Product Name**

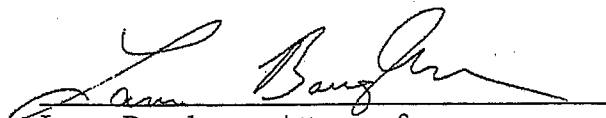
- 1 Beech Nut Cinnamon Raisins & Pears Stage 3
- 2 Beech Nut Oatmeal & Pears with Cinnamon Stage 3
- 3 Beech Nut Rice Cereals & Pears Stage 3
- 4 Beech Nut Sweet Potatoes Stage 3
- 5 Beech Nut Tender Sweet Carrots Stage 2
- 6 Earth's Best Organic Apple Cinnamon Oatmeal Stage 3
- 7 Earth's Best Organic Carrots Stage 2
- 8 Earth's Best Organic Peach Apricot Muesli Stage 3
- 9 Earth's Best Organic Sweet Potatoes Stage 2
- 10 Gerber Apples & Cinnamon with Oatmeal 3rd Foods
- 11 Gerber Carrots 2nd Foods
- 12 Gerber Sweet Potatoes 3rd Foods
- 13 O Organics for Baby Organic Carrots Stage 2
- 14 O Organics for Baby Organic Peach Rice Banana Stage 2
- 15 O Organics for Baby Organic Pears Stage 2
- 16 O Organics for Baby Organic Sweet Potatoes Stage 2
- 17 Organic Baby Carrots
- 18 Organic Baby Pears
- 19 Organic Baby Sweet Potatoes

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

I, Laura Baughman, hereby declare:

1. This Certificate of Merit accompanies the attached notice of violation in which it is alleged that the parties identified in the notice have violated Health & Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney representing the Environmental Law Foundation.
3. 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 alleged exposure to the listed chemical that is the subject of the action.
4. Based on the information obtained through those consultations, and on all 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 plaintiffs' 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 this 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 section 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: August 6, 2010



Laura Baughman, Attorney for  
Environmental Law Foundation

**CERTIFICATE OF SERVICE**

I am employed in the City of Dallas in the County of Dallas, Texas. I am over the age of eighteen years and not a party to the within action. My business address is 3102 Oak Lawn Ave., Suite 1100, Dallas, Texas 75219.

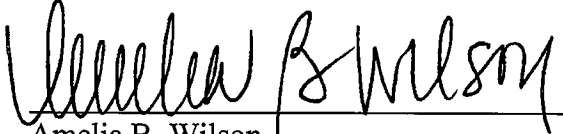
On August 5, 2010 I served the following document(s):

**NOTICE OF VIOLATION OF THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65), SECTION 25249.6 OF THE CALIFORNIA HEALTH AND SAFETY CODE, FOR EXPOSING CONSUMERS TO LEAD FROM THE FOLLOWING FOODS (FOR BABIES AND/OR TODDLERS):  
PACKAGED CARROTS, PACKAGED PEARS, PACKAGED FOODS THAT INCLUDE PEARS, PACKAGED APPLES, PACKAGED FOODS THAT INCLUDE APPLES, PACKAGED PEACHES, PACKAGED FOODS THAT INCLUDE PEACHES, AND PACKAGED SWEET POTATOES**

by UNITED STATE FIRST CLASS MAIL by placing a true and correct copy thereof in an envelope addressed to each of the persons named below at the address shown, and by sealing and depositing said envelope in the United States mail at Dallas, Texas, with postage fully prepaid to:

**See Attached List.**

Executed on this 5<sup>th</sup> day of August, 2010 at Dallas, Texas. I declare under penalty of perjury under the laws of the State of California and Texas that the foregoing is true and correct.

  
Amelia B. Wilson

**SERVICE LIST**

Current CEO or President  
Beech-Nut Nutrition Corporation  
100 South Fourth Street, Suite 1010  
St. Louis, MO 63102

Current CEO or President  
Gerber Products Company  
12 Vreeland Road  
Florham Park, NJ 07932-0697

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Modesto, CA 95352

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Safeway, Inc.  
5918 Stoneridge Mall Road  
Pleasanton, CA 94588

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

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

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 Fresno County  
2220 Tulare Street, #1000  
Fresno, CA 93721

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

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



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

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

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

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

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

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 Napa County  
931 Parkway Mall  
Napa, CA 94559

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

District Attorney of Stanislaus County  
800 11th Street, Room 200  
Modesto, CA 95353

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

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

District Attorney of Tuolumne County  
2 South Green  
Sonora, CA 95370

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

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

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

San Jose City Attorney's Office  
151 West Mission Street  
San Jose, CA 95110

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

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

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

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

District Attorney of Trinity County  
P.O. Box 1310  
Weaverville, CA 96093

San Diego City Attorney's Office  
1200 3rd Avenue, 12th Floor  
San Diego, CA 92101

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

Ken Alex, Special Assistant Attorney General  
Susan Fiering, Deputy Attorney General  
California Attorney General's Office  
1515 Clay Street  
Oakland, CA 94612