

## NOTICE OF VIOLATION

### California Safe Drinking Water and Toxic Enforcement Act

#### Lead in Footwear Made With Leather, Vinyl or Imitation Leather Materials

September 23, 2010

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, (510) 655-3900. CEH is a nonprofit corporation dedicated to protecting the environment, improving human health and supporting environmentally sound practices. Charlie Pizarro is the Associate Director of and a responsible individual within CEH.

#### Description of Violation:

- Violators: The names and addresses of the violators are listed on the attached Exhibit 1.
- Time Period of Exposure: The violations have been occurring since at least September 23, 2007, and are continuing to this day.
- 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.
- Chemical(s) 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 these violations is footwear made with leather, vinyl or imitation leather materials. Non-exclusive examples of this specific type of product are listed on the attached Exhibit 1.
- Description of Exposure: This Notice addresses consumer exposures to Lead as to all of the alleged violators listed on the attached Exhibit 1 and occupational exposures to Lead as to the alleged violators marked with a pound symbol (#) on the attached Exhibit 1. Use of the products identified in this Notice results in human exposures to Lead. Lead is found in the products as a stabilizer in the vinyl or imitation leather materials, as a chemical ingredient in some of the dyes, paints and other coloring agents used in the products and in the chemicals used in the leather tanning process. The route of exposure for the violations is ingestion via hand to mouth contact and dermal absorption directly through the skin. Consumer exposures to Lead from the products occur when consumers wear, take on or off, or otherwise touch or handle the products. Occupational exposures to Lead from the products occur throughout the State of California when workers manufacture, assemble, display, sell, store, assist consumers

trying on, or otherwise touch or handle the products. Persons exposed include workers in factories, warehouses, and distribution centers and clerks in retail stores that come into contact with the products. This Notice only applies to occupational exposures that occur in the State of California. No clear and reasonable warning is provided with these products regarding the carcinogenic or reproductive hazards of Lead.

- Statement Re: Occupational Exposures: As set forth above, this Notice alleges violations of both consumer and, as to those alleged violators marked with a pound symbol (#) on the attached Exhibit 1, occupational exposures to Lead. The following statement concerns procedures and requirements that are specific to occupational exposures. "This notice alleges the violation of Proposition 65 with respect to occupational exposures governed by the California State Plan for Occupational Safety and Health. The State Plan incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997. This approval specifically placed certain conditions with regard to occupational exposures on Proposition 65, including that it does not apply to the conduct of manufacturers occurring outside the State of California. The approval also provides that an employer may use the means of compliance in the general hazard communication requirements to comply with Proposition 65. It also requires that supplemental enforcement is subject to the supervision of the California Occupational Safety and Health Administration. Accordingly, any settlement, civil complaint, or substantive court orders in this matter must be submitted to the Attorney General." 8 Cal. Code Regs. § 338(b).

#### **Resolution 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 violator agrees in a binding written instrument 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 any of the alleged violators is 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 CEH through its counsel Eric S. Somers (esomers at lexlawgroup.com) or Howard Hirsch (hhirsch at lexlawgroup.com) at Lexington Law Group, 1627 Irving Street, San Francisco, CA 94122, (415) 759-4111.

**EXHIBIT 1**  
**September 23, 2010 Notice of Violation**  
**Lead in Footwear Made With Leather, Vinyl or Imitation Leather Materials**  
**Non-Exclusive Examples of the Products**

Names and Addresses of Responsible Parties	Non-Exclusive Examples of the Products	Item or SKU # or Further Description
<p style="text-align: center;"><b>Earth, Inc. #</b>  135 Second Avenue  Waltham, MA 02451</p> <p style="text-align: center;"><b>Meynard Designs, Inc. #</b>  135 Second Avenue  Waltham, MA 02451</p>	<p style="text-align: center;">Earth Women's Exer-Luxe  Sandals Spice Rhino Leather</p>	<p style="text-align: center;">SKU No.  6-92257-35981-1</p>
<p style="text-align: center;"><b>T and B Boots, Inc. #</b>  668 Marsh Street  San Luis Obispo, CA 93401</p> <p style="text-align: center;"><b>Takken Development Company, Inc. #</b>  670 Marsh Street  San Luis Obispo, CA 93401</p> <p style="text-align: center;"><b>Takken Enterprises #</b>  670 Marsh Street  San Luis Obispo, CA 93401</p>	<p style="text-align: center;">Earth Women's Exer-Luxe  Sandals Spice Rhino Leather</p>	<p style="text-align: center;">SKU No.  6-92257-35981-1</p>
<p style="text-align: center;"><b>Vida Shoes International, Inc. #</b>  29 West 56th St  New York, NY 10019</p>	<p style="text-align: center;">UnionBay Women's Trapeze  Flats - Yellow</p>	<p style="text-align: center;">SKU No.  8-83988-01139-4  Item No.  164075</p>

**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, 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 chemicals that are 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.

September 23, 2010



Howard Hirsch  
Attorney for CENTER FOR  
ENVIRONMENTAL HEALTH

**PROOF OF SERVICE BY MAIL AND ELECTRONIC 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 and my electronic notification address is [pcarey@lexlawgroup.com](mailto:pcarey@lexlawgroup.com).

On September 23, 2010, 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 asterisk).

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.***

Also on this date, I transmitted via electronic mail the documents listed above to the electronic mail addresses set forth below at 12:56 p.m. on September 23, 2010:

Lon Wixson, Deputy District Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
[lwixson@contracostada.org](mailto:lwixson@contracostada.org)

Gary Lieberstein, District Attorney  
Napa County  
931 Parkway Mall  
Napa, CA 94559  
[CEPD@countyofnapa.org](mailto:CEPD@countyofnapa.org)

Birgit Fladager, District Attorney  
Stanislaus County  
832 12<sup>th</sup> Street, Ste. 300  
Modesto, CA 95354  
[Prop65@standa.org](mailto:Prop65@standa.org)

Stephan R. Passalacqua, District Attorney  
Sonoma County  
600 Administration Drive, Rm. 212J  
Santa Rosa, CA 95403  
[jbarnes@sonoma-county.org](mailto:jbarnes@sonoma-county.org)

Dije Ndreu, Deputy District Attorney  
Monterey County  
230 Church Street, Bldg. 2  
Salinas, CA 93901  
[ndreud@co.monterey.ca.us](mailto:ndreud@co.monterey.ca.us)

Phillip J. Cline, District Attorney  
Tulare County  
221 S. Mooney Avenue, Rm. 224  
Visalia, CA 93291  
[Prop65@co.tulare.ca.us](mailto:Prop65@co.tulare.ca.us)

Gregory D. Totten, District Attorney  
Ventura County  
800 South Victoria Avenue  
Ventura, CA 93009  
[daspecialops@ventura.org](mailto:daspecialops@ventura.org)

Rod Pacheco, District Attorney  
Riverside County  
4075 Main Street  
Riverside, CA 92501  
[Prop65@rivcoda.org](mailto:Prop65@rivcoda.org)

The transmission was reported as complete and without error.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on September 23, 2010, at San Francisco, California.

Signed:   
Patrick Carey

## SERVICE LIST

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

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

District Attorney of Amador County  
708 Court Street, Ste. 202  
Jackson, CA 95642

District Attorney of Butte County  
Administration Building  
25 County Center Drive  
Oroville, CA 95965

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

District Attorney of Colusa County  
547 Market Street, Ste. 102  
Colusa, CA 95932

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

District Attorney of El Dorado  
County  
515 Main Street  
Placerville, CA 95667

District Attorney of Fresno County  
2220 Tulare Street, Ste. 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 Imperial County  
939 Main Street, Ste. 102  
El Centro, CA 92243

District Attorney of Inyo County  
P.O. Drawer D  
Independence, CA 93526

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

District Attorney of Kings County  
1400 West Lacey Blvd.  
Hanford, CA 93230

District Attorney of Lake County  
255 N. Forbes Street  
Lakeport, CA 95453

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

District Attorney of Los Angeles  
County  
210 W. Temple Street, Ste. 1800  
Los Angeles, CA 90012-3210

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209 West Yosemite Avenue  
Madera, CA 93637

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3501 Civic Center Drive, Rm. 130  
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District Attorney of Mendocino  
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Ukiah, CA 95482

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2222 "M" Street  
Merced, CA 95340

District Attorney of Modoc County  
204 S. Court Street, Rm. 202  
Alturas, CA 96101-4020

District Attorney of Mono County  
P.O. Box 617  
Bridgeport, CA 93546

District Attorney of Nevada County  
110 Union Street  
Nevada City, CA 95959

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

District Attorney of Placer County  
10810 Justice Center Drive, Ste.  
240  
Roseville, CA 95678

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

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

District Attorney of San Benito  
County  
419 Fourth Street, 2<sup>nd</sup> Fl.  
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District Attorney of San  
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San Bernardino, CA 92415

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County  
330 West Broadway, Ste. 1300  
San Diego, CA 92101

District Attorney of San  
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County  
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Stockton, CA 95202

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Obispo County  
1050 Monterey Street, Rm. 450  
San Luis Obispo, CA 93408

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400 County Center, 3<sup>rd</sup> Fl.  
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70 West Hedding Street, West Wing  
San Jose, CA 95110

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

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Attn: Jerry Lule-Jian  
312-D E. Cook Street  
Santa Maria, CA 93454

District Attorney of Shasta County  
1525 Court Street, 3<sup>rd</sup> Fl.  
Redding, CA 96001-1632

District Attorney of Sierra County Courthouse  
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Downieville, CA 95936

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

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

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

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

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

District Attorney of Tuolumne County  
423 N. Washington Street  
Sonora, CA 95370

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

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

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

San Diego City Attorney's Office  
1200 Third Avenue, Ste. 1620  
San Diego, CA 92101

San Francisco City Attorney's Office  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

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

California Attorney General's Office  
Attention: Proposition 65  
Coordinator and Robert Thomas  
1515 Clay Street, Ste. 2000  
P.O. Box 70550  
Oakland, CA 94612-0550

Michel Meynard, CEO \*  
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