

SHUTE, MIHALY  
& WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102  
T: 415 552-7272 F: 415 552-5816  
www.smwlaw.com

ELLISON FOLK  
Attorney  
folk@smwlaw.com

August 30, 2012

**ATTORNEY GENERAL COPY: CONTAINS OFFICIAL  
INFORMATION PER EVIDENCE CODE § 1040**

**NOTICE OF VIOLATION OF  
CALIFORNIA HEALTH & SAFETY CODE § 25249.5 ET SEQ.**

Dear Public Enforcement Agencies:

Shute, Mihaly & Weinberger LLP ("Firm") represents As You Sow ("AYS"), a 501 (c) (3) non-profit corporation dedicated to, among other causes, the protection of the environment, toxics reduction, the promotion of and improvement of human health, the improvement of worker and consumer rights, environmental education and corporate accountability. As You Sow is based in San Francisco, California and was incorporated in 1992 under the laws of the State of California.

This firm and AYS have documented violations of California's Safe Drinking Water & Toxic Enforcement Act of 1986 ("Proposition 65"), codified at Health & Safety Code §25249.5 et seq. This letter serves to provide this Firm's and AYS' notification of these violations to the public enforcement agencies. Pursuant to §25249.7(d) of the statute, this Firm intends to bring an enforcement action on behalf of AYS sixty (60) days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

A summary of the statute and its implementing regulations, which was prepared by the lead agency designated under the statute, is enclosed with the copy of this

notice served upon the violator. The specific details of the violations that are the subject of this notice are provided below.

Alleged violators. The name of the violator covered by this notice is Carter's, Inc.

Chemicals. These violations involve exposures to Antimony oxide (Antimony trioxide) from the products listed below. On October 1, 1990, the State of California officially listed Antimony oxide (Antimony trioxide) as a chemical known to cause cancer.

Consumer products. The product that is the subject of this notice is Carter's Waterproof Keep-Me-Dry 2-Pack Quilted Pads, manufactured, sold, and/or distributed by Carter's, Inc. in California.

Route of exposure. Use of the product identified in this notice results in human exposures to Antimony oxide (Antimony trioxide). The routes of exposure include ingestion after adults, small children, and infants touch or handle the product; direct ingestion when infants and small children put the product in their mouth; dermal absorption directly through the skin and eyes when adults, small children, and infants touch or handle the product; and inhalation when adults, small children, and infants breathe near the product. The product is designed to be used by infants and small children. No clear and reasonable warning is provided with this product regarding the carcinogenic hazards of Antimony oxide (Antimony trioxide).

Duration of violations. Each of these ongoing violations has occurred on every day since at least August 30, 2011, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are removed from the products.

Pursuant to Title 11, C.C.R. § 3100, a certificate of merit is attached hereto.

In keeping with its public interest mission and to expeditiously rectify these ongoing violations of California law, AYS is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation. You may communicate directly with As You Sow to discuss an early resolution of this matter by

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contacting Danielle Fugere, President, 311 California Street, Suite 510, San Francisco, CA 94104, 415-391-3212. You may also contact AYS' counsel:

Ellison Folk  
Shute, Mihaly & Weinberger LLP  
396 Hayes Street  
San Francisco, CA 94102  
PH: 415.552.7272; Fax: 415.552.5816  
Email: folk@smwlaw.com

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Ellison Folk

431457.1

CERTIFICATE OF MERIT

(Notice of Proposition 65 Violation on Carter's, Inc.)

I, Ellison Folk, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the party in the notice has violated section 25249.6 of the Health and Safety Code by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
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 exposure to the listed chemicals that are 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 plaintiff's case can be established and that 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 section 25249.7(h)(2) of the Health and Safety Code, 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: 8-30-12

  
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Ellison Folk

Enclosure (For Attorney General Copy only)

## CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years, and not a party to the within action; my business address is: 396 Hayes Street, San Francisco, CA 94102.

On August 30, 2012, I served the following documents:

- Notice of Violation of California Health & Safety Code § 25249.5 et seq.
- Certificate of Merit
- “The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary”

on the following party by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below, and depositing it at a United States Postal Service Office for delivery by Certified Mail:

Michael D. Casey  
Chairman of the Board, Chief Executive Officer  
Carter’s, Inc.  
1170 Peachtree St. NE  
Atlanta, GA 30309

On August 30, 2012, I served the following document(s):

- Notice of Violation of California Health & Safety Code § 25249.5 et seq.
- Certificate of Merit, including Supporting Documentation Required by Title 11, C.C.R. § 3102

on the following party by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below, and depositing it at a United States Postal Service Office for delivery by Certified Mail:

Proposition 65 Enforcement Reporting  
Attention: Prop 65 Coordinator  
1515 Clay Street, Suite 2000  
Post Office Box 70550  
Oakland, California 94612-0550

On August 30, 2012, I served the following document(s):

- Notice of Violation of California Health & Safety Code § 25249.5 et seq.
- Certificate of Merit

on each of the parties on the service list attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the service list attached hereto, and depositing it at United States Postal Service mail box for delivery by First Class Mail.

Executed on August 30, 2012, at San Francisco, California.

  
Sean Mulligan

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