

SIXTY-DAY NOTICE OF INTENT TO SUE FOR VIOLATION OF THE SAFE DRINKING WATER  
AND TOXIC ENFORCEMENT ACT OF 1986

(*Cal. Health & Safety Code § 25249.5, et seq.*) (“Proposition 65”)

August 30, 2012

Current CEO/President  
TMD International, LLC  
14 Madison Road  
Fairfield, NJ 07004

Current CEO/President  
TMD International, LLC  
215 Pine Street  
Julerberg, CO 80737

Current CEO/President  
TMD International, LLC  
1275 Valley Brook Ave.  
Lyndhurst, NJ 07071

Current CEO/President  
TMD International, LLC  
1051 Kile Circle  
Quakertown, PA 18951

Steven A. Burd, CEO/President, or  
Current CEO/President  
Safeway, Inc.  
5918 Stoneridge Mall Road  
Pleasanton, CA 94588

Steven A. Burd, CEO/President, or  
Current CEO/President  
The Vons Companies, Inc.  
5918 Stoneridge Mall Road  
Pleasanton, CA 94588

Steven A. Burd, CEO/President, or  
Current CEO/President  
The Vons Companies, Inc., dba  
Vons  
635 W. Foothill Blvd.  
La Canada, CA 91011

Sumner Bennett, CEO/President, or  
Current CEO/President  
ATA Retail Services, Inc.  
30773 Wiegman Road  
Hayward, CA 94544

AND THE PUBLIC PROSECUTORS LISTED ON THE DISTRIBUTION LIST ACCOMPANYING THE  
ATTACHED CERTIFICATE OF SERVICE

Re: Violations of Proposition 65 concerning **Liners containing Di (2-ethylhexyl) phthalate  
(DEHP)**

To whom else this may concern:

**Consumer Advocacy Group, Inc.** (“CAG”), the noticing entity, located at **9903 Santa Monica Boulevard #225, Beverly Hills, California 90212**, serves this Notice of Violation (“Notice”) on TMD International, LLC, Safeway, Inc., The Vons Companies, Inc., The Vons Companies, Inc., dba Vons, ATA Retail Services, Inc. (collectively “Violators”) pursuant to and in compliance with Proposition 65. Violators may contact CAG concerning this Notice through its designated person within the entity, its attorney, Reuben Yeroushalmi 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, CA 90212, telephone no. (310) 623-1926, facsimile no. (310) 623-1930. This Notice satisfies a prerequisite for CAG to commence an action against Violators in any Superior Court of California to enforce Proposition 65. The violations addressed by this Notice occurred at numerous locations in each county in California as reflected in the district attorney addresses listed in the attached distribution list. CAG is serving this Notice upon each person or entity responsible for the alleged violations, the California Attorney General, the district attorney for each county where alleged violations occurred, and the City Attorney for each city with a population (according to the most recent decennial census) of over 750,000 located within counties where the alleged violations occurred.

- CAG is an organization based in California. CAG is an entity dedicated to protecting the environment, improving human health, and supporting environmentally sound practices. By sending this Notice, CAG is acting “in the public interest” pursuant to Proposition 65.
- This Notice concerns violations of the warning prong of Proposition 65, which states that “[n]o 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 . . .” *Cal. Health & Safety Code § 25249.6*.
- **Produce Bin Liners (“Liners”)** contains **Di (2-ethylhexyl) phthalate (DEHP)**, also known as Diethyl Hexyl Phthalate and Bis (2-ethylhexyl) phthalate, which is known to the State of California to cause both cancer and reproductive toxicity, developmental, male. On January 1, 1988, the Governor of California added **Di (2-ethylhexyl) phthalate (DEHP)**, to the list of chemicals known to the State to cause cancer, and on October 24, 2003, the Governor added **Di (2-ethylhexyl) phthalate (DEHP)**, to the list of chemicals known to the State to cause developmental male reproductive toxicity. Both additions took place more than twenty (20) months before CAG served this Notice.
  - An exemplar of the violations caused by **Liners** includes but is not limited to:
    1. **CULINARY ELEMENTS “produce bin LINER” “Easy-grip handle” “Generous 12x12 size” “Item # 9200 Made in China” “GM DEPT 02058 Q4 P 865 6 8987 37 \$2.99” (Yellow)**
    2. **CULINARY ELEMENTS “produce bin LINER” “Easy-grip handle” “Generous 12x12 size” “Item # 9200 Made in China” “GM DEPT 02058 Q1 P 865 4 8987 53 \$2.99” (Ivory)**
- This Notice addresses consumer products exposures. A “[c]onsumer products exposure” is an exposure which results from a person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service.” *Cal. Code Regs. 27 tit. § 25602(b)*.

Violators caused consumer product exposures in violation of Proposition 65 by producing or making available for distribution or sale in California to consumers **Liners**. The packaging for **Liners** (meaning any label or other written, printed or graphic matter affixed to or accompanying the product or its container or wrapper) contains no Proposition 65-compliant warning. Nor did Violators, with regard to **Liners**, provide a system of signs, public advertising identifying the system and toll-free information services, or any other system, which provided clear and reasonable warnings. Nor did Violators, with regard to **Liners**, provide identification of the product at retail outlets in a manner that provided a warning through shelf labeling, signs, menus, or a combination thereof. **Liners** are designed to have fresh produce placed directly on them.

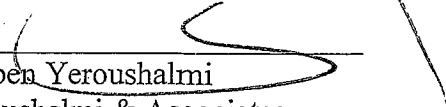
These violations occurred each day between August 30, 2009, and August 30, 2012, and are ever continuing thereafter.

The principal routes of exposure with regard to **Liners** are and were through dermal contact, ingestion, and inhalation. Persons sustain exposures by handling **Liners** without wearing gloves or any other personal protective equipment, or by touching bare skin or mucous membranes with gloves after handling **Liners**, as well as through direct and indirect hand to mouth contact, hand to mucous membrane, or breathing in particulate matter dispersed from **Liners**.

Proposition 65 requires that notice of intent to sue be given to the violator(s) sixty (60) days before the suit is filed. *Cal. Health & Safety Code* § 25249.7(d)(1). With this letter, CAG gives notice of the alleged violations to Violators and the appropriate governmental authorities. In absence of any action by the appropriate governmental authorities within sixty (60) calendar days of the sending of this notice (plus ten (10) calendar days because the place of address is beyond the State of California but within the United States), CAG may file suit. See *Cal. Code Civ. Proc.* § 1013; *Cal. Health & Safety Code* § 25249.7(d)(1); and *Cal. Code Regs.* tit. 27 § 25903(d)(1). CAG remains willing and open to discussing the possibility of resolving its grievances short of formal litigation.

With the copy of this notice submitted to the Violator, a copy of the following is attached: The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary.

Dated: 8/30/12

  
Reuben Yeroushalmi  
Yeroushalmi & Associates  
Attorneys for Consumer Advocacy Group, Inc.

Liners containing Di (2-ethylhexyl) phthalate (DEHP)


CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Reuben Yeroushalmi, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the party(s) identified in the notice(s) has violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party.
3. I have consulted with at least one person with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the 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 and 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: 8/30/12

By:   
Reuben Yeroushalmi

**CERTIFICATE OF SERVICE**

I am over the age of 18 and not a party to this case. I am a resident of or employed in the county where the mailing occurred. My business address is 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, CA 90212.

ON THE DATE SHOWN BELOW, I SERVED THE FOLLOWING:

- 1) 60-Day Notice of Intent to Sue Under Health & Safety Code Section 25249.6
- 2) Certificate of Merit: Health and Safety Code Section 25249.7(d)
- 3) Certificate of Merit (Attorney General Copy): Factual information sufficient to establish the basis of the certificate of merit (*only sent to Attorney General*)
- 4) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary

by enclosing copies of the same in a sealed envelope, along with an unsigned copy of this declaration, addressed to each person shown below and depositing the envelope in the U.S. mail with the postage fully prepaid. Place of Mailing: Beverly Hills, CA

**Name and address of each party to whom documents were mailed:**

Current CEO/President  
TMD International, LLC  
14 Madison Road  
Fairfield, NJ 07004

Current CEO/President  
TMD International, LLC  
215 Pine Street  
Julerberg, CO 80737

Current CEO/President  
TMD International, LLC  
1275 Valley Brook Ave.  
Lyndhurst, NJ 07071

Current CEO/President  
TMD International, LLC  
1051 Kile Circle  
Quakertown, PA 18951

Steven A. Burd, CEO/President, or  
Current CEO/President  
Safeway, Inc.  
5918 Stoneridge Mall Road  
Pleasanton, CA 94588

Steven A. Burd, CEO/President, or  
Current CEO/President  
The Vons Companies, Inc.  
5918 Stoneridge Mall Road  
Pleasanton, CA 94588

Steven A. Burd, CEO/President, or  
Current CEO/President  
The Vons Companies, Inc., dba  
Vons  
635 W. Foothill Blvd.  
La Canada, CA 91011

Sumner Bennett, CEO/President, or  
Current CEO/President  
ATA Retail Services, Inc.  
30773 Wiegman Road  
Hayward, CA 94544

**Name and address of each public prosecutor to whom documents were mailed:**

See Distribution List

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date of Mailing: 08-30-2012

By: \_\_\_\_\_

Fereshteh Shakib

## Distribution List

|   |   |  |
|---|---|--|
| Alameda County District Attorney<br>1225 Fallon St, Room 900<br>Oakland, CA 94612                       | Los Angeles County District Attorney<br>210 W Temple St, 18th Floor<br>Los Angeles, CA 90012              | Mono County District Attorney<br>PO Box 617<br>Bridgeport, CA 93517                                    |
| Alpine County District Attorney<br>PO Box 248<br>Markleeville, CA 96120                                 | Madera County District Attorney<br>209 W Yosemite Ave<br>Madera, CA 93637                                 | San Joaquin County District Attorney<br>PO Box 990<br>Stockton, CA 95201 -0990                         |
| Amador County District Attorney<br>708 Court, Suite 202<br>Jackson, CA 95642                            | Mariposa County District Attorney<br>P.O. Box 730<br>Mariposa, CA 95338                                   | San Francisco County District Attorney<br>850 Bryant St, Rm 322<br>San Francisco, CA 94103             |
| Butte County District Attorney<br>25 County Center Dr.<br>Oroville, CA 95965-3385                       | Marin County District Attorney<br>3501 Civic Center Drive, #130<br>San Rafael, CA 94903                   | San Diego County District Attorney<br>330 W. Broadway, Ste 1300<br>San Diego, CA 92101-3803            |
| Calaveras County District Attorney<br>891 Mountain Ranch Road<br>San Andreas, CA 95249                  | Mendocino County District Attorney<br>P.O. Box 1000<br>Ukiah, CA 95482                                    | San Bernardino County District Attorney<br>316 N Mountain View Ave<br>San Bernardino, CA 92415-0004    |
| Office of the Attorney General<br>P.O. Box 70550<br>Oakland, CA 94612-0550                              | Los Angeles City Attorney<br>200 N Main St Ste 1800<br>Los Angeles CA 90012                               | San Francisco City Attorney<br># 1 Dr. Carlton B. Goodlett Place, Suite 234<br>San Francisco, CA 94102 |
| Colusa County District Attorney<br>Courthouse, 547 Market St.<br>Colusa, CA 95932                       | Inyo County District Attorney<br>P.O. Drawer D<br>Independence, CA 93526                                  | Placer County District Attorney<br>10810 Justice Center Drive<br>Suite 240<br>Roseville, CA 95678-6231 |
| Contra Costa County District Attorney<br>725 Court St., Room 402<br>Martinez, CA 94553                  | Orange County District Attorney<br>PO Box 808<br>Santa Ana, CA 92702                                      | Merced County District Attorney<br>650 W. 20 <sup>th</sup> Street<br>Merced, CA 95340                  |
| Del Norte County District Attorney<br>450 "H" St.<br>Crescent City, CA 95531                            | Nevada County District Attorney<br>201 Church St, Suite 8<br>Nevada City, CA 95959-2504                   | Napa County District Attorney<br>PO Box 720<br>Napa, CA 94559-0720                                     |
| El Dorado County District Attorney<br>515 Main St.<br>Placerville, CA 95667-5697                        | Plumas County District Attorney<br>520 Main Street, Rm 404<br>Quincy, CA 95971                            | Riverside County District Attorney<br>3960 Orange St, Ste. 5<br>Riverside, CA 92501                    |
| Fresno County District Attorney<br>2220 Tulare St, Ste. 1000<br>Fresno, CA 93721                        | Sacramento County District Attorney<br>901 G Street<br>Sacramento, CA 95814                               | San Benito County District Attorney<br>419 4th St<br>Hollister, CA 95023                               |
| Glenn County District Attorney<br>PO Box 430<br>Willows, CA 95988                                       | San Luis Obispo County District Attorney<br>County Government Center, Rm 450<br>San Luis Obispo, CA 93408 | Siskiyou County District Attorney<br>PO Box 986<br>Yreka, CA 96097                                     |
| Humboldt County District Attorney<br>825 5th St., 4 <sup>th</sup> Floor<br>Eureka, CA 95501             | San Mateo County District Attorney<br>400 County Center<br>Redwood City, CA 94063                         | Solano County District Attorney<br>600 Union Ave<br>Fairfield, CA 94533                                |
| Imperial County District Attorney<br>939 W. Main St., 2 <sup>nd</sup> Floor<br>El Centro, CA 92243-2860 | Santa Barbara County District Attorney<br>1112 Santa Barbara St.<br>Santa Barbara, CA 93101               | Sonoma County District Attorney<br>600 Administration Dr., Rm 212-J<br>Santa Rosa, CA 95403            |
| Kern County District Attorney<br>1215 Truxtun Ave.<br>Bakersfield, CA 93301                             | Santa Clara County District Attorney<br>70 W Hedding St.<br>San Jose, CA 95110                            | Shasta County District Attorney<br>1525 Court St, 3rd Floor<br>Redding, CA 96001-1632                  |
| Kings County District Attorney<br>Gov't Ctr, 1400 W Lacey Blvd<br>Hanford, CA 93230                     | Santa Cruz County District Attorney<br>PO Box 1159<br>Santa Cruz, CA 95061                                | Sierra County District Attorney<br>PO Box 457<br>Downieville, CA 95936-0457                            |
| Lake County District Attorney<br>255 N Forbes St<br>Lakeport, CA 95453-4790                             | Stanislaus County District Attorney<br>PO Box 442<br>Modesto, CA 95353                                    | Trinity County District Attorney<br>PO Box 310<br>Weaverville, CA 96093                                |
| Modoc County District Attorney<br>204 S. Court Street<br>Alturas, CA 96101-4020                         | Sutter County District Attorney<br>446 Second Street<br>Yuba City, CA 95991                               | Yuba County District Attorney<br>215 5th St<br>Marysville, CA 95901                                    |
| San Diego City Attorney<br>City Center Plaza<br>1200 3rd Ave # 1100<br>San Diego, CA 92101              | Lassen County District Attorney<br>200 S Lassen St, Suite 8<br>Susanville, CA 96130                       | Monterey County District Attorney<br>PO Box 1131<br>Salinas, CA 93902                                  |
| Tuolumne County District Attorney<br>2 S Green St<br>Sonora, CA 95370                                   | Tulare County District Attorney<br>County Civic Center, Rm 224<br>Visalia, CA 93291                       | Yolo County District Attorney<br>310 Second St<br>Woodland, CA 95695                                   |
| Ventura County District Attorney<br>800 S Victoria Ave<br>Ventura, CA 93009                             | Tehama County District Attorney<br>P.O. Box 519<br>Red Bluff, CA 96080                                    | San Jose City Attorney<br>151 W. Mission St.<br>San Jose, CA 95110                                     |