

From: ATA Law Group

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MATTHEW C. MACLEAR, SBN 209228
ANTHONY M. BARNES SBN 199048
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Oakland, CA 94609
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FILED BY FAX
ALAMEDA COUNTY
September 26, 2018
CLERK OF
THE SUPERIOR COURT
By Cheryl Clark, Deputy
CASE NUMBER:
RG18922356

Attorney for Plaintiff
Center for Advanced Public Awareness, Inc.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA
UNLIMITED JURISDICTION**

CENTER FOR ADVANCED PUBLIC
AWARENESS, a California non-profit
corporation,

Plaintiff,

vs.

JVCKENWOOD USA CORPORATION,
individually and doing business as JVC, a
California corporation, and DOES 1 – 25,

Defendants.

Case No.:

**COMPLAINT FOR PERMANENT
INJUNCTION, CIVIL PENALTIES, AND
OTHER RELIEF**

Health & Safety Code 25249.5, *et seq.*

1 Plaintiff CENTER FOR ADVANCED PUBLIC AWARENESS (“PLAINTIFF” or
2 “CAPA”) brings this action in the interests of the general public and on information and belief,
3 hereby alleges:

4 **INTRODUCTION**

5 1. This action seeks to remedy the continuing failure of Defendants JVCKENWOOD
6 USA CORPORATION, individually and doing business as JVC, (hereafter individually referred to
7 as “DEFENDANT” or collectively as “DEFENDANTS”) to warn consumers in California they are
8 being exposed to Di-isononyl phthalate (“DINP”), a chemical known to the State of California to
9 cause cancer. According to the Safe Drinking Water and Toxics Enforcement Act of 1986, Health
10 and Safety Code, section 25249.5 (also known as and referred to hereafter as “Proposition 65”),
11 businesses must provide persons with a “clear and reasonable warning” before exposing individuals
12 to chemicals known to the state to cause cancer. DEFENDANTS package, distribute, market, and/or
13 sell in California a certain product containing DINP known as “JVC Lightweight On-Ear
14 Headphones” Item Number 4683807057 (“PRODUCT”).

15 2. DINP (the “LISTED CHEMICAL”) is a substance known to the state of California
16 to cause cancer.

17 3. The use and/or handling of the PRODUCT causes exposure to the LISTED
18 CHEMICAL at levels requiring a “clear and reasonable warning” under Proposition 65. (Health and
19 Safety Code § 25249.6). DEFENDANTS exposed consumers, users, and handlers to the LISTED
20 CHEMICAL and failed to provide the health hazard warnings required by Proposition 65.

21 4. DEFENDANTS’ continued packaging, distribution, marketing, and/or sales of the
22 PRODUCT without the required health hazard warnings causes individuals to be involuntarily,
23 unknowingly, and unwittingly exposed to levels of the LISTED CHEMICALS that violate
24 Proposition 65.

25 **PARTIES**

26 5. PLAINTIFF is a non-profit corporation organized under California law. CAPA is
27 dedicated to, among other causes, helping safeguard the public from health hazards by bringing
28 about a reduction in the use and misuse of hazardous and toxic chemicals, fostering and increasing

1 the awareness of chemical used to manufacture consumer products, facilitating a safe environment
2 for consumers and employees, and encouraging corporate responsibility.

3 6. CAPA is a person within the meaning of Health and Safety Code, section 25249.11
4 and this enforcement action in the public interest pursuant to Health and Safety Code, section
5 25249.7, subdivision (d). Health and Safety Code, section 25249.7, subdivision (d) specifies a
6 person may bring an action to enforce Proposition 65 in the public interest, provided certain notice
7 requirements and that no other public prosecutor is diligently prosecuting an action for the same
8 violation(s).

9 7. JVCKENWOOD USA CORPORATION, individually and doing business as JVC, is
10 now, was at all times relevant herein, a corporation organized under the laws of California and is a
11 person in the course of doing business within the meaning of Health and Safety Code, section
12 25249.11.

13 8. DEFENDANTS own, administer, direct, control, and/or operate facilities and/or
14 agents, distributors, sellers, marketers, or other retail operations who place its products into the
15 stream of commerce in California (including but not limited to Alameda County) under the brand
16 name JVC Lightweight On-Ear Headphones, which contain the LISTED CHEMICAL without first
17 giving clear and reasonable warnings.

18 9. DEFENDANTS, separately and each of them, are or were, at all times relevant to the
19 claims in this Complaint and continuing through the present, legally responsible for compliance
20 with the provisions of Proposition 65. Whenever an allegation regarding any act of a DEFENDANT
21 is made herein, such allegation shall be deemed to mean that DEFENDANT, or its agents, officers,
22 directors, managers, supervisors, or employees did or so authorized such acts while engaged in the
23 affairs of DEFENDANTS' business operations and/or while acting within the course and scope of
24 their employment or while conducting business for DEFENDANTS for a commercial purpose.

25 10. In this Complaint, when reference is made to any act of a DEFENDANTS, such
26 allegation shall mean that the owners, officers, directors, agents, employees, contractors, or
27 representatives of DEFENDANTS acted or authorized such actions, and/or negligently failed and
28

1 omitted to act or adequately and properly supervise, control, or direct its employees and agents
2 while engaged in the management, direction, operation, or control of the affairs of the business
3 organizations. Whenever reference is made to any act of any DEFENDANTS, such allegation shall
4 be deemed to mean the act of each DEFENDANTS acting individually, jointly and severally as
5 defined by Civil Code, section 1430 *et seq.*

6 11. PLAINTIFF does not know the true names, capacities, and liabilities of
7 DEFENDANT DOES Nos. 1-25, inclusive, and therefore sues them under fictitious names.
8 PLAINTIFF will amend this Complaint to allege the true name and capacities of the DOE
9 DEFENDANTS upon being ascertained. Each of these DEFENDANTS was in some way legally
10 responsible for the acts, omissions and/or violations alleged herein.

11 **JURISDICTION AND VENUE**

12 12. This Court has jurisdiction over this action pursuant to California Constitution
13 Article VI, Section 10, which grants the Superior Court, “original jurisdiction in all causes except
14 those given by statute to other trial courts.” The statute under which this action is brought does not
15 specify any other court with jurisdiction.

16 13. This Court has jurisdiction over DEFENDANTS because they are business entities
17 that do sufficient business, have sufficient minimum contacts in California, or otherwise
18 intentionally avail themselves of the California market, through the sale, marketing, and use of their
19 PRODUCT in California, to render the exercise of jurisdiction over them by the California courts
20 consistent with traditional notions of fair play and substantial justice.

21 14. Venue in this action is proper in the Alameda County Superior Court because the cause,
22 or part thereof, arises in the County of Alameda since DEFENDANTS’ PRODUCT is marketed,
23 offered for sale, sold, and/or used in this county.

24 **STATUTORY BACKGROUND**

25 15. The People of the California declared in Proposition 65 their right “[t]o be informed
26 about exposures to chemicals that cause cancer, birth defects, or other reproductive harm.” (Section
27 1, subdivision (b) of Initiative Measure, Proposition 65). To effect this goal, Proposition 65 requires
28 that individuals be provided with a “clear and reasonable warning” before being exposed to

1 substances listed by the State of California as causing cancer or reproductive toxicity. (Health &
2 Saf. Code, § 25249.6.) Health and Safety Code, section 25249.6 states, in pertinent part, “[n]o
3 person in the course of doing business shall knowingly and intentionally expose any individual to a
4 chemical known to the state to cause cancer or reproductive toxicity without first giving clear and
5 reasonable warning to such individual . . .”

6 16. An exposure to a chemical in a consumer product is one “that results from a person’s
7 acquisition, purchase, storage, consumption, or any reasonably foreseeable use of a consumer good,
8 including consumption of food.” (Cal. Code Regs., tit. 27, § 25600.1, subd. (e).)

9 17. Proposition 65 provides that any “person who violates or threatens to violate” the
10 statute may be enjoined in a court of competent jurisdiction. (Health & Saf. Code, § 25249.7). The
11 phrase “threaten to violate” is defined to mean creating “a condition in which there is a substantial
12 probability that a violation will occur” (*Id.*, § 25249.11, subd. (e).) Violators are liable for civil
13 penalties of up to \$2,500 per day for each violation of the Act. (*Id.*, § 25249.7.)

14 **FACTUAL BACKGROUND**

15 18. On December 20, 2013, the State of California listed DINP as a chemical known to
16 the State to cause cancer. The clear and reasonable warning requirement for DINP went into effect
17 one year later on December 20, 2014.

18 19. The No Significant Risk Level (“NSRL”) for DINP is 146 µg/day for adults. The
19 NSRL is calculated based on a human body weight of 70 kg.

20 20. To test DEFENDANTS’ PRODUCT for DINP, PLAINTIFF hired a well-respected
21 and accredited testing laboratory that used the testing protocol used and approved by the California
22 Attorney General. The results of testing undertaken by PLAINTIFF of DEFENDANTS’
23 PRODUCT show the PRODUCT tested were in violation of the 146 µg/day “safe harbor” daily
24 dose limits, as set forth in Proposition 65’s regulations. The overall exposure estimate from the
25 PRODUCT, JVC Lightweight On-Ear Headphones, exceeds the NSRL through dermal exposure
26 through normal use. This exposure level significantly exceeds the NSRL set by the California
27 Office of Environmental Health Hazard Assessment. As a result, the JVC Lightweight On-Ear
28 Headphones needs a clear a reasonable warning under Proposition 65.

1 21. The consumer exposures that are the subject of this notice result from the purchase,
2 acquisition, and handling of the product. Consequently, a primary route of exposure to these
3 chemicals is through direct dermal contact when consumers handle, touch, or otherwise use the JVC
4 Lightweight On-Ear Headphones. The potential exists for dermal exposure of DINP through direct
5 contact with consumer’s scalp, ears, skin, or hands, when the headphones are used as intended.

6 22. At all times relevant to this action, DEFENDANTS, therefore, have knowingly and
7 intentionally exposed the users, consumers, and/or handlers of the PRODUCT to the LISTED
8 CHEMICAL without first giving a clear and reasonable warning to such individuals.

9 23. The PRODUCT has allegedly been sold by DEFENDANT for use in California since
10 at least November 1, 2016. The PRODUCT continues to be distributed and sold in California
11 without the requisite warning information.

12 24. As a proximate result of acts by DEFENDANTS, as persons in the course of doing
13 business within the meaning of Health and Safety Code, section 25249.11, individuals throughout
14 the State of California, including in the County of Alameda, have been exposed to the LISTED
15 CHEMICAL without a clear and reasonable warning on the PRODUCT. The individuals subject to
16 the violative exposures include normal and foreseeable users of the PRODUCT, as well as all other
17 persons exposed to the PRODUCT.

18 25. On March 9, 2018, CAPA served DEFENDANTS and each other the appropriate
19 public enforcement agencies with a document entitled “Notice of Violation of California Health &
20 Safety Code Section 25249.5 *et seq.* (Proposition 65)” that provided DEFENDANTS and the public
21 enforcement agencies with notice that DEFENDANTS were in violation of Proposition 65 for
22 failing to warn purchasers and individuals using the PRODUCT that the use of the PRODUCT
23 exposes them to DINP, a chemical known in the State of the California to cause cancer. A true and
24 correct copy of the 60-Day Notice is attached hereto as Exhibit A, is hereby incorporated by
25 reference, and is available on the Attorney General’s website located at <https://oag.ca.gov/prop65>.

26 26. On March 9, 2018, PLAINTIFF sent a 60-Day Notice of Proposition 65 Violations
27 (“NOTICE”) to the requisite public enforcement agencies, and to DEFENDANTS. The NOTICE
28 was issued pursuant to, and in compliance with, the requirements of Health and Safety Code,

1 section 25249.7, subdivision (d) and the statute’s implementing regulations regarding the notice of
2 the violations to be given to certain public enforcement agencies and to the violator. The NOTICE
3 included, *inter alia*, the following information: the name, address, and telephone number of the
4 noticing individual; the name of the alleged violators; the statute violated; the approximate time
5 period during which violations occurred; and descriptions of the violations including the chemicals
6 involved, the routes of toxic exposure; and the specific product or type of product causing the
7 violations.

8 27. DEFENDANT was provided a copy of the NOTICE and the document entitled “The
9 Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary,” which is
10 also known as Appendix A to Title 27 of the California Code of Regulations, section 25903, via
11 certified mail.

12 28. The California Attorney General was provided a copy of the NOTICE and a
13 Certificate of Merit by the attorney for the noticing party, stating that there is a reasonable and
14 meritorious case for this action, and attaching factual information sufficient to establish a basis for
15 the certificate, including the identity of the persons consulted with and relied on by the certifier, and
16 the facts, studies, or other data reviewed by those persons, pursuant to Health and Safety Code,
17 section 25249.7, subdivision (h)(2) via online submission.

18 29. After expiration of the sixty (60) day notice period, the appropriate public
19 enforcement agencies have failed to commence and diligently prosecute a cause of action under
20 Health and Safety Code, section 25249.5, *et seq.* against DEFENDANTS based on the allegations
21 herein.

22 30. Within the last three (3) years from the filing of this complaint and continuing
23 through the present, subject to the relevant tolling agreements applicable herein, and after
24 reasonable inquiry and due diligence in attempting to discover additional violations,
25 DEFENDANTS, separately and each of them, have engaged in acts and omissions in violation of
26 Health and Safety Code, section 25249.5, *et seq.* concerning the PRODUCT described in the March
27 9, 2018 NOTICE. PLAINTIFF agreed to toll the statute of limitation in an agreement with
28 DEFENDANT preserving their right to pursue violations beyond the typical limitations period

1 provided by statute(s). The tolling agreement was reached through negotiation with counsel for
2 DEFENDANT.

3 **FIRST CAUSE OF ACTION**

4 **(Civil Penalties for Violations of Health and Safety Code, section 25249.5, et seq. Concerning
5 the PRODUCT Described in the March 9, 2018 Prop. 65 Notice of Violation)**

6 31. PLAINTIFF re-alleges and incorporates by reference Paragraphs 1 through 30,
7 inclusive, as if specifically set forth herein.

8 32. By committing the acts alleged in this Complaint, DEFENDANTS at all times
9 relevant to this action, and continuing through the present, have violated Health and Safety Code,
10 section 25249.6 by, in the course of doing business, knowingly and intentionally exposing
11 individuals in California to chemicals known to the State of California to cause cancer without first
12 giving clear and reasonable warnings to such persons who use, consume or handle the PRODUCT
13 containing the LISTED CHEMICAL, pursuant to Health and Safety Code, sections 25249.6 and
14 25249.11, subdivision (f).

15 33. By the above-described acts, DEFENDANTS are liable, pursuant to Health and
16 Safety Code, section 25249.7, subdivision (b), for a civil penalty of up to \$2,500 per day per
17 violation for each unlawful exposure to the LISTED CHEMICAL from the PRODUCTS, in an
18 amount in excess of \$750,000.

19 **THE NEED FOR INJUNCTIVE RELIEF**

20 **(Injunctive Relief for Violations of Health and Safety Code § 25249.5, et seq. Concerning the
21 PRODUCT Described in the March 9, 2018 Prop. 65 Notice of Violation)**

22 34. PLAINTIFF re-alleges and incorporates by reference Paragraphs 1 through 33,
23 inclusive, as specifically set forth herein.

24 35. By committing the acts alleged in this Complaint, DEFENDANTS at all times
25 relevant to this action, and continuing through the present, have violated Health and Safety Code,
26 section 25249.6 by, in the course of doing business, knowingly and intentionally exposing
27 individuals in California to chemicals known in the State of California to cause cancer without first
28 giving clear and reasonable warnings to such persons who use, consume, or handle the PRODUCT
containing the LISTED CHEMICAL, pursuant to Health and Safety Code, sections 25249.6 and
25249.11, subdivision (f).

1 36. By the above-described acts, DEFENDANTS have violated Health and Safety Code,
2 section 25249.6 and are therefore subject to preliminary and permanent injunctions ordering
3 DEFENDANTS to stop violating Proposition 65, to provide warnings to all present and future
4 customers, and to provide warnings to DEFENDANTS' past customers who purchased or used the
5 PRODUCTS without receiving a clear and reasonable warning.

6 37. A remedy of injunctive relief under Proposition 65 is specifically authorized by
7 Health and Safety Code, section 25249.7, subdivision (a).

8 38. Continuing commission by DEFENDANTS of the acts alleged above will
9 irreparably harm the citizens of the State of California, for which harm they have no plain, speedy,
10 or adequate remedy at law.

11 39. In the absence of preliminary and then permanent injunctive relief, DEFENDANTS
12 will continue to create a substantial risk of irreparable injury by continuing to cause consumers to
13 be involuntarily, unknowingly, and unwittingly exposed to the LISTED CHEMICAL through the
14 use, consumption, and/or handling of the PRODUCT.

15 **PRAYER FOR RELIEF**

16 Wherefore, PLAINTIFF prays for the following relief:

17 A. A preliminary and permanent injunction, pursuant to Health and Safety Code, section
18 25249.7, subdivision (b), enjoining DEFENDANTS, their agents, employees, assigns, and all persons
19 acting in concert or participating with DEFENDANTS, from manufacturing, distributing, marketing,
20 or selling the PRODUCT in California without first providing a clear and reasonable warning, within
21 the meaning of Proposition 65, that the users and/or handlers of the PRODUCT are exposed to the
22 LISTED CHEMICAL;

23 B. An injunctive order, pursuant to Health and Safety Code, section 25249.7, subdivision
24 (b), compelling DEFENDANTS to identify and locate each individual who has purchased the
25 PRODUCT since November 1, 2016, and to provide a warning to such person that the use of the
26 PRODUCT will expose the user to the chemicals known to cause cancer;

27 C. An assessment of civil penalties pursuant to Health and Safety Code, section 25249.7,
28 subdivision (b), against DEFENDANTS in the amount on \$2,500 per day for each violation of

1 Proposition 65, in excess of \$750,000, according to proof;

2 D. An award to PLAINTIFF of its reasonable attorney's fees and cost of suit pursuant to
3 California Code of Civil Procedure, sections 1032 *et seq.* and 1021.5, as PLAINTIFF shall specify in
4 further applications to the Court; and

5 E. Such other and further relief the Court deems just and proper.

6
7 DATED: September 26, 2018

AQUA TERRA AERIS LAW GROUP

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10 _____
11 Matthew C. Maclear
12 Anthony M. Barnes
13 Attorneys for Plaintiff
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EXHIBIT A



Matthew M. Maclear
mcm@atalawgroup.com
415.568.5200

March 9, 2018

**NOTICE OF VIOLATION OF
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.
(PROPOSITION 65)**

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

Aqua Terra Aeris (ATA) Law Group represents the Center for Advanced Public Awareness, Inc. (CAPA), 180 Promenade Circle, Suite 300, Sacramento, CA 95834; CAPA is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, fostering and increasing the public awareness of chemicals used to manufacture consumer products, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

CAPA has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code section 25249.5 *et seq.*, with respect to the product identified below. These violations have occurred and continue to occur because the alleged Violators identified below failed to provide required clear and reasonable warnings with these products. Section 25249.6 of the statute provides 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 providing a clear and reasonable warning to such individual." Without proper warnings regarding the toxic effects of exposures to this listed chemical that results from contact with this product, California citizens lack the information necessary to make an informed decision on whether and/or how to eliminate (or reduce) their risk of exposure to the listed chemical from the reasonably foreseeable use of the product.

This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Health and Safety Code section 25249.7(d), CAPA intends to file a private enforcement action in the public interest 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.

Certificate of Merit and General Information about Proposition 65. Pursuant to Title 11, California Code of Regulations section 3100, a certificate of merit is attached hereto. Pursuant to Title 27, C.C.R. section 25903(b), a copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with this letter served to the alleged Violators identified below.

Alleged Violator. The name(s) of the company covered by this notice that violated Proposition 65 (hereinafter the "Violator," individually, or "Violators," collectively) are:

- **JVCKenwood USA Corporation**
- **Kenwood Technologies USA, Inc.**
- **JVC America, Inc.**
- **Zetron, Inc.**



Notice of Violation of California Health & Safety Code § 25249.5 *et seq.*
March 9, 2018

Consumer Products and Listed Chemical. The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

- **JVC Lightweight On-Ear Headphones – Di-isononyl phthalate (DINP)**
Approximate Dimension: 2.2 X 6.7 X 8.1 inches
UPC-A No.: 0 46838 07057 0
EAN-13: 0 046838 070570

On December 20, 2013, the State of California listed DINP as a chemical known to the State to cause cancer. The addition took place more than twenty (20) months before CAPA served this Notice.

Violations. The alleged Violators knowingly and intentionally have exposed and continue to knowingly and intentionally expose consumers within the State of California to Di-isononyl phthalate (DINP) at levels that, upon reasonable use of the product, exceed the No Significant Risk Level and/or the Maximum Allowable Dose Level without providing clear and reasonable warning of this exposure. In particular, the product does not warn that it contains chemicals known to the State of California to cause cancer.

The No Significant Risk Level (“NSRL”) for DINP is 146 µg/day. The NSRL is calculated based on a body weight of 70 kg for the general population. (Cal. Code Regs. tit. 27, § 25703(a)(8)). The overall exposure estimate from the JVC Lightweight On-Ear Headphones exceeds NSRL with only 2.5 hours of using product as intended. This exposure level significantly exceeds the NSRL set by the California Office of Environmental Health Hazard Assessment. As a result, the JVC Lightweight Headphones needs a clear a reasonable warning under Proposition 65.

Route of Exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of the product. Consequently, a primary route of exposure to these chemicals is through dermal exposure. Significant dermal exposure will occur with the scalp and ear skins through standard usage. Consumers and other individuals, are exposed to the listed chemical through reasonably foreseeable direct dermal contact when they handle, touch, or otherwise use the JVC Lightweight On-Ear Headphones. The potential exists for dermal exposure of DINP through direct contact with the user’s scalp, ears, skin, or hands, when the headphones are used as intended.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least November 1, 2016, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced via reformulation to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violators committed Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to this chemical.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, CAPA is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) reformulate the product to reduce/ eliminate further DINP exposures (2) pay an appropriate civil penalty; and (3) provide clear and



Notice of Violation of California Health & Safety Code § 25249.5 *et seq.*
March 9, 2018

reasonable warnings compliant with Proposition 65 for products sold in the future. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time consuming litigation.

CAPA has retained ATA Law Group as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated herein.**

Dated: March 9, 2018

Very truly yours,

A handwritten signature in blue ink, appearing to read "Matt Maclear", is written over a light blue rectangular background.

Matthew C. Maclear
AQUA TERRA AERIS LAW GROUP
Attorney for Center for Advanced Public
Awareness

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to JVCKenwood USA Corporation, Kenwood Technologies USA, Inc., JVC America, Inc., and Zetron, Inc.)
- Additional Supporting Information for Certificate of Merit (to AG only)



Notice of Violation of California Health & Safety Code § 25249.5 *et seq.*
March 9, 2018

CERTIFICATE OF MERIT

Re: Center for Advanced Public Awareness, Inc.’s Notice of Proposition 65 Violations by JVCKenwood USA Corporation, Kenwood Technologies USA, Inc., JVC America, Inc., and Zetron, Inc.

I, Matthew Maclear, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the party identified in the notice violated California Health & Safety Code Section 25249.6 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 have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.

4. Based on the information obtained through those consultants, 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 that 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. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California 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: March 9, 2018

A handwritten signature in blue ink that reads "Matthew C. Maclear".

Matthew C. Maclear
AQUA TERRA AERIS LAW GROUP
Attorney for Center for Advanced Public
Awareness



Notice of Violation of California Health & Safety Code § 25249.5 *et seq.*
March 9, 2018

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 of age, and am not a party to the within entitled action. My business address is 828 San Pablo Avenue, Suite 115B, Albany, CA 94706. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Albany, California.

On March 9, 2018, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or Chief of Executive Officer
JVKenwood USA Corporation
2201 E. Dominguez Street
Long Beach, CA 90810

Agent for Service of Process:
Megan Bretz
2710 Gateway Oaks Drive, Ste 150N
Sacramento, CA 95833-3505

Current President or Chief Executive Officer
Kenwood Technologies USA, Inc.
2201 E. Dominguez Street
Long Beach, CA 90810

Agent for Service of Process:
CT Corporation System
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

Current President or Chief Executive Officer
JVC America, Inc.
1 JVC Road
Tuscaloosa, AL 35405

Agent for Service of Process:
CT Corporation System
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

Brent Dippie, Chief Executive Officer
Zetron, Inc.
PO Box 97004
Redmond, WA 9870

Agent for Service of Process:
Megan Bretz
2710 Gateway Oaks Drive, Ste 150N
Sacramento, CA 95833-3505

On March 9, 2018, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice>:

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000



Notice of Violation of California Health & Safety Code § 25249.5 *et seq.*
March 9, 2018

Oakland, CA 94612-0550

On March 9, 2018, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was **sent via electronic mail** to the party listed below:

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Notice of Violation of California Health & Safety Code § 25249.5 *et seq.*
 March 9, 2018

On March 9, 2018, I served the following documents: **NOTICE OF VIOLATION, 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 a U.S. Postal Service Office with the postage fully prepaid for delivery by U.S. First Class Mail.

Executed on March 9, 2018, in Albany California.

Esmeralda Bustos

Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Los Angeles County 210 West Temple Street, Suite 18000 Los Angeles, CA 90012	District Attorney, Shasta County 1355 West Street Redding, CA 96001
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, Sierra County PO Box 457 Downieville, CA 95936
District Attorney, Amador County 708 Court Street Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Stanislaus County 832 12th Street, Suite 300 Modesto, CA 95354
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District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080



Notice of Violation of California Health & Safety Code § 25249.5 *et seq.*
 March 9, 2018

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District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
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District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, San Bernardino County 303 West 3 rd Street, 6 th Floor San Bernardino, CA 92415-0502	San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
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Appendix A
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BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS

Barclays Official California Code of Regulations [Currentness](#)
Title 27. Environmental Protection
Division 4. Office of Environmental Health Hazard Assessment
Chapter 1. Safe Drinking Water and Toxic Enforcement Act of 1986
Article 9. Miscellaneous

27 CCR Appendix A

Appendix A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986
(PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Proposition 65 List." Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Period. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "No Significant Risk Levels" (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level" divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a "significant amount" of the listed chemical entering any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" level for chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off- premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at: <http://oehha.ca.gov/prop65/law/p65law72003.html>.

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS. . .

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@oehha.ca.gov.

Revised: May 2017

¹ All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

² See Section 25501(a)(4).

Note: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

HISTORY

1. New Appendix A filed 4-22-97; operative 4-22-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 17).
2. Amendment filed 1-7-2003; operative 2-6-2003 (Register 2003, No. 2).
3. Change without regulatory effect renumbering title 22, section 12903 and Appendix A to title 27, section 25903 and Appendix A, including amendment of appendix, filed 6-18-2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 25).
4. Amendment filed 11-19-2012; operative 12-19-2012 (Register 2012, No. 47).
5. Amendment of appendix and Note filed 11-19-2014; operative 1-1-2015 (Register 2014, No. 47).
6. Amendment of Appendix A filed 8-23-2017; operative 10-1-2017 (Register 2017, No. 34).

This database is current through 2/16/18 Register 2018, No. 7

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END OF DOCUMENT

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