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County of Los Angeles
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David W. Slayton,
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By Y. Tarasyuk, Deputy Clerk

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Aida Poulsen (SBN: 333117)
Peter T. Sato (SBN: 238486)
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Attorneys for Plaintiff
The Chemical Toxin Working Group Inc. doing
business as Healthy Living Foundation Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

THE CHEMICAL TOXIN WORKING
GROUP INC., a California non-profit
corporation, doing business as HEALTHY
LIVING FOUNDATION INC.,

Plaintiff,

vs.

The Kroger Co., an Ohio corporation; Ralphs
Grocery Company, an Ohio corporation;
Hughes Markets, Inc. dba Ralphs, a California
corporation; and Instacart, Inc., a Delaware
corporation; and DOES 1-10,

Defendants.

CASE NO. **23STCV16358**

**COMPLAINT FOR INJUNCTIVE
RELIEF, CIVIL PENALTIES, AND
OTHER RELIEF UNDER HEALTH
AND SAFETY CODE SECTION 25249.5,
et seq
(PROPOSITION 65)**

Plaintiff The Chemical Toxin Working Group Inc. doing business as Healthy Living
Foundation Inc. (“Plaintiff” or “HLF”) hereby alleges the following on information and belief:

INTRODUCTION

1. This action seeks injunctive and declaratory relief and civil penalties to remedy the
continuing failure of Defendants, The Kroger Co., Ralphs Grocery Company, Hughes Markets,

1 Inc. dba Ralphs, and Instacart, Inc. (“Defendants”) to warn consumers in California that they are
2 being exposed to Lead and Cadmium, chemical knowns to the State of California to cause cancer
3 and reproductive toxicity found in Ralph’s Mussels Fresh Farm Raised, UPC 26935140999.

4 2. This action is brought in the public interest and is based on The Safe Drinking
5 Water and Toxic Enforcement Act of 1986 (Health and Safety Code § 25249.6 et seq.) also known
6 as “Proposition 65.” This statute mandates that any person in the course of doing business must
7 provide a clear and reasonable warning prior to exposing any individual to a chemical known to
8 the state to cause cancer, birth defects or other reproductive harm.

9 **PARTIES**

10
11 3. HLF is a California non-profit public benefit corporation dedicated to, among other
12 causes, reducing the amount of chemical toxins in consumer products, the promotion of human
13 health, environmental safety, and improvement of worker and consumer safety.

14 4. HLF is a person within the meaning of Health and Safety Code section 25249.11,
15 subdivision (a). HLF, acting as a private attorney general, brings this action in the public interest
16 as defined under Health and Safety Code section 25249.7, subdivision (d).

17 5. The Kroger Co. is an Ohio corporation, doing business in the State of California at
18 all relevant times herein.

19 6. Ralphs Grocery Company is an Ohio corporation, doing business in the State of
20 California at all relevant times herein.

21 7. Hughes Markets, Inc. dba Ralphs is a California corporation, business in the State
22 of California at all relevant times herein.

23 8. Instacart, Inc. is a Delaware corporation; doing business in the State of California

1 at all relevant times herein.

2 9. Plaintiff is presently unaware of the true names and capacities of defendants DOES
3 1-10, and therefore sues these defendants by such fictitious names. Plaintiff will amend this
4 complaint to allege their true names and capacities when ascertained. Plaintiff is informed,
5 believes, and thereon alleges that each fictitiously named defendant is responsible in some manner
6 for the occurrences herein alleged and the violations caused thereby. DOES 1-10 are each a person
7 in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and
8 25249.11.

9 10. At all times mentioned herein, the term “Defendants” includes Defendant and
10 DOES 1-10.

11 11. Defendants employ ten or more persons and have employed ten or more persons at
12 all times relevant to this action, and are each a person in the course of doing business within the
13 meaning of Health and Safety Code §§ 25249.6 and 25249.11.

14 **JURISDICTION AND VENUE**

15
16 12. This Court has jurisdiction pursuant to California Constitution Article VI, Section
17 10, which grants the Superior Court original jurisdiction in all causes except those given by statute
18 to other trial courts. The statute under which this action is brought does not specify any other basis
19 for jurisdiction.

20 13. This Court has jurisdiction over this action pursuant to Health and Safety Code
21 section 25249.7, which allows enforcement of violations of Proposition 65 in any Court of
22 competent jurisdiction.

23 14. This Court has jurisdiction over Defendants because Defendants either reside or are

1 located in this State or are foreign corporations authorized to do business in California, are
2 registered with the California Secretary of State, or Defendants have sufficient minimum contacts
3 with California, and otherwise intentionally avails itself of the California market through the
4 marketing, distribution, and/or sale of Products in the State of California, so as to render the
5 exercise of jurisdiction over Defendants by the California courts consistent with traditional notions
6 of fair play and substantial justice.

7 15. Venue is proper in the Los Angeles Superior Court because the cause of action
8 arises out of violations in the County of Los Angeles and/or because Defendants conducted, and
9 continue to conduct, business in the County of Los Angeles with respect to the consumer products
10 that are the subject of this action.

11 16. Plaintiffs seek injunctive and declaratory relief and civil penalties from Defendants’
12 violations of the prohibitions of Proposition 65 (Health and Safety Code § 25249.5 et seq.)

13 **STATUTORY BACKGROUND**

14
15 17. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute
16 passed as “Proposition 65” by close to a two-to-one voting margin. Proposition 65 is referred to as
17 a “right-to-know” law intended to inform consumers of the potential for exposure to toxic
18 chemicals and thereby empower them with the information needed to avoid the exposure.

19 18. Proposition 65 requires that individuals be provided with a “clear and reasonable
20 warning” before being exposed to substances listed by the State of California as causing cancer or
21 reproductive toxicity. The warning requirement of Proposition 65 is contained in Health & Safety
22 Code § 25249.6, which provides,

23 No person in the course of doing business shall knowingly and intentionally

1 expose any individual to a chemical known to the state to cause cancer or
2 reproductive toxicity without first giving clear and reasonable warning to such
individual....

3 19. In this case, the exposures are caused by consumer products. "Consumer product"
4 means any article, or component part thereof, including food, that is produced, distributed, or sold
5 for the personal use, consumption or enjoyment of a consumer. (27 California Code of Regulations
6 § 25600.1(d)) "Consumer product exposure" means an exposure that results from a person's
7 acquisition, purchase, storage, consumption, or any reasonably foreseeable use of a consumer
8 product, including consumption of a food. (27 California Code of Regulations § 25600.1(e)).

9 20. Proposition 65 requires the State to publish a list of chemicals known to cause
10 cancer or birth defects or other reproductive harm (Health and Safety Code §25249.8.) This list
11 now comprises over 800 chemicals.

12 21. Proposition 65 establishes a procedure by which the State is to develop a list of
13 chemicals "known to the State to cause cancer or reproductive toxicity." (Health & Safety, §
14 25249.8.)

15 22. Lead and lead compounds ("Lead") were listed as chemicals known to the State of
16 California to cause reproductive toxicity on February 27, 1987. Lead became subject to the
17 warning requirement one year later and was therefore subject to the "clear and reasonable" warning
18 requirements of Proposition 65 beginning on February 27, 1988. (27 California Code of
19 Regulations § 25000, *et seq.*; Health & Safety Code § 25249.5, *et seq.*). Due to the toxicity of lead,
20 the maximum allowable dose level is 0.5 micrograms a day. (27 California Code of Regulations §
21 25805(b).) As a point of reference, one microgram is equal to one millionth of a gram (1 microgram
22 = 1/1,000,000 gram).

23 23. Lead and lead compounds were listed as chemicals known to the State of California

1 to cause cancer on October 1, 1992. Lead became subject to the warning requirement one year
2 later and was therefore subject to the “clear and reasonable” warning requirements of Proposition
3 65 beginning on October 1, 1993. (27 California Code of Regulations § 25000, *et seq.*; Health &
4 Safety Code §25249.5, *et seq.*). Due to the carcinogenicity of lead and lead compounds, the no
5 significant risk level for lead is 15 micrograms a day. (27 California Code of Regulations §
6 25705(b)(1).)

7 24. Cadmium and Cadmium compounds (“Cadmium”) were listed as chemicals known
8 to the State of California to cause reproductive toxicity on May 1, 1997. Cadmium became subject
9 to the warning requirement one year later and was therefore subject to the “clear and reasonable”
10 warning requirements of Proposition 65 beginning on May 1, 1998. (27 California Code of
11 Regulations § 25000, *et seq.*; Health & Safety Code § 25249.5, *et seq.*). Due to the toxicity of
12 Cadmium, the maximum allowable dose level is 4.1 micrograms a day. (27 California Code of
13 Regulations § 25805(b).) As a point of reference, one microgram is equal to one millionth of a
14 gram (1 microgram = 1/1,000,000 gram).

15 25. Cadmium and Cadmium compounds (“Cadmium”) were listed as chemicals known
16 to the State of California to cause cancer on October 1, 1997. Cadmium became subject to the
17 warning requirement one year later and was therefore subject to the “clear and reasonable” warning
18 requirements of Proposition 65 beginning on October 1, 1998. (27 California Code of Regulations
19 § 25000, *et seq.*; Health & Safety Code §25249.5, *et seq.*). Due to the carcinogenicity of Cadmium
20 and Cadmium compounds, the no significant risk level for Cadmium is 0.5 micrograms a day. (27
21 California Code of Regulations § 25705(b)(1).)

22 26. Proposition 65 provides that any “person who violates or threatens to violate” the
23 statute “may be enjoined in a court of competent jurisdiction.” (Health & Safety Code § 25249.7).

1 Violators are liable for civil penalties of up to \$2,500 per day for each violation of the Act. (Health
2 & Safety Code §25249.7(b)(1).)

3 27. Violations of Proposition 65 may be enforced by any person in the public interest,
4 after providing a 60-day notice of the violations of the Attorney General, appropriate District
5 Attorneys and City Attorneys and the alleged violator. (Health and Safety Code § 25249.7(d)(1).)
6 Remedies include injunctive relief to prevent actual or threatened violations, and penalties up to
7 \$2,500 per day per violation. (Health and Safety Code §25249.7(a) and (b).)

8 28. Proposition 65 may be enforced by any person who provides notice sixty days
9 before filing suit to both the violator and designated law enforcement officials. When the law
10 enforcement officials do not file a timely Complaint, this enables a citizen suit to be filed pursuant
11 to Health & Safety Code section 25249.7, subdivisions (c) and (d).

12 **FACTUAL BACKGROUND**

13
14 29. Defendants are businesses that develop, manufacture, package, distribute, market,
15 offer for sale and/or sell the Product in the State of California.

16 30. Plaintiff hired a well-respected and accredited testing laboratory to test Defendant's
17 Product for Lead and Cadmium. The results of the testing show that the Product contains Lead and
18 Cadmium.

19 31. Individuals are exposed to the Lead and Cadmium when they ingest the Product.

20 32. The Product continues to be offered for sale, sold and/or otherwise made available
21 for use and/or handling to persons in California.

22 33. At all times relevant to this action, Defendants, therefore, have knowingly and
23 intentionally exposed the users of the Product to Lead and Cadmium without first giving a clear

1 and reasonable warning to such individuals. The Product continues to be distributed and sold in
2 California without providing the requisite warning, and thus the violations are ongoing and
3 continuous and will continue to occur into the future.

4 34. As a proximate result of acts by Defendants, persons in the course of doing business
5 within the meaning of Health & Safety Code § 25249.11(b), individuals throughout the State of
6 California, including in the County of Los Angeles, have been exposed to Lead and Cadmium
7 without a clear and reasonable warning.

8 **SATISFACTION OF 60 DAY NOTICE**

9
10 35. On August 26, 2022, Plaintiff served Defendant and each appropriate public
11 enforcement agency with a Proposition 65 Notice, a document entitled “Sixty-Day Notice of Intent
12 to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“Notice of
13 Violation”) that provided Defendant and the public enforcement agency with notice that Defendant
14 was in violation of Proposition 65 for failing to warn purchasers and consumers of the Product that
15 ingestion of the Product exposes them to Lead and Cadmium, chemicals known to the State of
16 California to cause cancer and reproductive toxicity. The Notice of Violation is designated with
17 Attorney General number 2022-01990. The Notice of Violation constitutes adequate notice to
18 Defendant because it provided adequate information to allow Defendant to assess the nature of the
19 alleged violations. A certificate of merit and a certificate of service accompanied the Notice of
20 Violation, and both certificates comply with Proposition 65 and its implementing regulations. A
21 true and correct copy of the Notice of Violation is attached here as Exhibit A and is incorporated
22 herein by reference.

23 36. More than 60 days have passed since Plaintiff served the Notice of Violation and

1 no public enforcement entity has filed a Complaint in this case.

2 37. Plaintiff is commencing this action more than sixty (60) days from the date that
3 Plaintiff served the Notice of Violation on the Defendants and the public prosecutors referenced
4 in the paragraphs above.

5 38. Plaintiff is informed, believes, and thereon alleges that neither the Attorney
6 General, nor any applicable district attorney or city attorney has commenced an action or is
7 diligently prosecuting an action against either of the Defendants.

8 **FIRST CAUSE OF ACTION**
9 **(Violation of Health & Safety Code § 25249.6, Failure to Provide Clear and Reasonable
Warning under Proposition 65 – Against all Defendants)**

10 39. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 38,
11 inclusive, as if superficially set forth herein.

12 40. By committing the acts alleged above, Defendants have, in the course of doing
13 business, knowingly and intentionally exposed users of the Product to Lead and Cadmium,
14 chemicals known to the State of California to cause cancer and reproductive toxicity without first
15 giving clear and reasonable warning to such individuals within the meaning of Health & Safety
16 Code § 25249.6 and continue to violate the statute as the Product continues to make its way to
17 individuals in California through the chain of commerce.

18 41. Said violations render Defendants liable for civil penalties, up to \$2,500 per day for
19 each violation, and subject Defendants to injunction.

20 **PRAYER**

21 Wherefore, Plaintiff accordingly prays for the following relief:
22
23

1 42. An assessment of civil penalties pursuant to Health & Safety Code § 25249.7(b),
2 against Defendants in the amount of \$2,500 per day for each violation of Proposition 65;

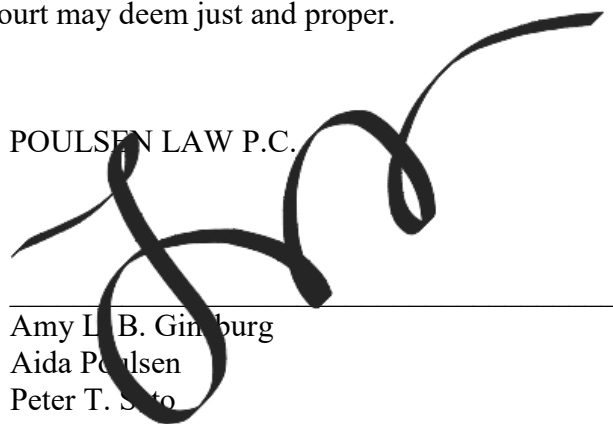
3 43. An injunctive order, pursuant to Health & Safety Code § 25249.7(a), for such
4 temporary restraining orders, preliminary and permanent injunctive orders as are necessary to
5 prevent Defendants from exposing individuals to Lead and Cadmium without providing a clear
6 and reasonable warning for the Product;

7 44. On all Causes of Action, an award to Plaintiff of its reasonable attorneys' fees and
8 costs;

9 45. For such other relief as the Court may deem just and proper.

10
11 DATED: July 13, 2023

POULSEN LAW P.C.



Amy L. B. Ginsburg
Aida Poulsen
Peter T. Sato
Attorneys for Plaintiff
The Chemical Toxin Working Group Inc. doing
business as Healthy Living Foundation

VIA CERTIFIED FIRST CLASS MAIL

William Rodney McMullen, Current
President or CEO
The Kroger Co.
1014 Vine Street
Cincinnati, Ohio 45202

William Rodney McMullen, Current
President or CEO
The Kroger Co.
c/o Corporation Service Company
3366 Riverside Drive, Suite 103
Upper Arlington, OH 43221

Christine S. Wheatley, Current President or
CEO
Ralphs Grocery Company
1014 Vine Street
Cincinnati, Ohio 45202

Christine S. Wheatley, Current President or
CEO
Ralphs Grocery Company
c/o Corporation Service Company Which
Will Do Business In California As CSC -
Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Christine S. Wheatley, Current President or
CEO
Ralphs Grocery Company
c/o Corporation Service Company
3366 Riverside Drive, Suite 103
Upper Arlington, OH 43221

Thomas L Schwilke, Current President or
CEO
Hughes Markets, Inc. dba Ralphs
1014 Vine Street
Cincinnati, Ohio 45202

VIA ELECTRONIC FILING

State of California Department of Justice

Office of Attorney General of California
Filing link: oag.ca.gov/prop65

VIA FIRST CLASS MAIL

District Attorneys of California Counties
and City Attorneys, as in the Certificate of
Service

VIA E-MAIL

District Attorneys of California Counties
and City Attorneys, as in the Certificate of
Service

(continued on next page)

Thomas L Schwilke, Current President or
CEO

Hughes Markets, Inc. dba Ralphs
c/o Corporation Service Company Which
Will Do Business In California As CSC -
Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Fidji Simo or Current Chief Executive
Officer or President

Instacart
50 Beale Street, Suite 600
San Francisco, CA 94105

Fidji Simo or Current Chief Executive
Officer or President

Instacart
c/o Cogency Global, Inc.
1325 J. Street, Ste 1550
Sacramento, CA 95814

Fidji Simo or Current Chief Executive
Officer or President

Instacart
c/o Cogency Global, Inc.
850 New Burton Rd., Ste 201
Dover, DE 19904



RE: Cadmium, Lead and lead compounds in The Kroger Co., Ralphs Grocery Company, Hughes Markets, Inc. dba Ralphs, and Instacart products

August 26, 2022

60-DAY NOTICE OF INTENT TO SUE

for violations of the Safe Drinking Water and Toxic Enforcement Act of 1986

Dear alleged violators and public enforcement agencies,

Poulsen Law P.C. represents The Chemical Toxin Working Group, Inc., a California non-profit corporation, doing business as Healthy Living Foundation Inc. (“HLF,” “Noticing Party”), a non-profit consumer health organization engaged in supporting public health, implementing measures reducing the amount of chemical toxins in consumer products, improvement of worker and consumer safety from chemical exposures. as well as publishing comparative results of testing foods and consumer products and educating the public.

HLF has enforced a large number of Cal. Health & Safety Code violations in the public interest and developed an extensive expertise in prosecuting manufacturers and distributors of food and consumer products for violations of health laws and consumer safety. These cases have resulted in significant public benefit, including reformulation of products to remove toxic chemicals to make them safer, and putting label warnings on products tested as contaminated with lead, cadmium, acrylamide, dioxane, or removing them from the California market.

HLF’s Chief Officer David Steinman is a journalist, a publisher and an author of a bestseller *Diet For A Poisoned Planet* (Crown ed., 1990, Ballantine 2d ed., 1992, Running Press 3d ed., 2007); his major books also include *The Safe Shopper’s Bible* (Macmillan ed., 1995, Wiley 2d ed., 2000), *The Breast Cancer Prevention Program* (Macmillan ed., 1997), *Living Healthy In A Toxic World* (Perseus ed., 1996), *Safe Trip To Eden: Ten Steps To Save The Planet Earth From The Global Warming Meltdown* (Running Press ed., 2007), along with many publications in periodicals and other media.

The Safe Drinking Water and Toxic Enforcement Act of 1986, codified in the California Health & Safety Code sections 25249.5, et seq. (“Proposition 65”), requires that a 60-day notice of intent to sue be provided to a violator of Cal. Health & Safety Code § 25249.6.

With this notice of violation (Notice), HLF gives a written notice of the alleged violation, bringing this action in the public interest as defined under the Cal. Health & Safety Code § 25249.7(d), seeking to prosecute the alleged continuing noncompliance and to warn consumers about their exposure to the violative chemical(s), or reduce and/or eliminate consumer exposures from product(s) (collectively, the “Specified Products” and each a “Specified Product”) listed in the table below, which are manufactured, distributed and/or sold



by The Kroger Co., Ralphs Grocery Company, Hughes Markets, Inc. dba Ralphs, and Instacart (referred to collectively as the “Noticed Parties”).

This Notice covers the violations of Proposition 65 that are currently known to the Noticing Party from information now available as specifically related to the violating products listed below and manufactured, distributed or/and sold by and through the Noticed Parties. HLF is continuing its investigation that may reveal further violations.

The Specified Product(s) subject to this Notice, the chemical(s) in the Specified Product(s) identified as exceeding allowable levels, and the Noticed Parties responsible for sales of the Specified Products, are as follows:

Specified Products	Violative chemical	Noticed Party
Ralphs Mussels Fresh Farm Raised UPC 26935140999	Cadmium and Lead and lead compounds	The Kroger Co., Ralphs Grocery Company, Hughes Markets, Inc. dba Ralphs, and Instacart

The primary route of exposure has been through ingestion.

Noticed Parties have manufactured, marketed, distributed and/or sold the Specified Product which, according to the test results, have exposed and continue to expose consumers within the State of California to cadmium and lead.

Cadmium is listed pursuant to Proposition 65 as a chemical known to the State of California to cause developmental toxicity, reproductive toxicity and cancer.

Lead and lead compounds (“lead”) is listed pursuant to Proposition 65 as a chemical known to the State of California to cause developmental toxicity, reproductive toxicity and cancer.

Cal. Health & Safety Code § 25249.6 requires that a “clear and reasonable” warning be provided prior to exposure to chemicals listed under Proposition 65. The Noticed Parties are in violation of Proposition 65 because the Noticed Parties have failed to provide a warning to consumers that they are being exposed to cadmium and lead. While in the course of doing business, the Noticed Parties are knowingly and intentionally exposing consumers to cadmium and lead without first providing a “clear and reasonable” warning.

The method of warning should be a warning that appears on the product’s label. See Cal. Code Regs. tit. 27, § 25602, subd. (a)(3), and subd. (b) for internet purchases also at the point of sale, as applicable. The Noticed Parties have not provided any Proposition 65 warnings as required by law or any other appropriate warnings that persons handling, ingesting and/or otherwise using the Specified Product are being exposed to cadmium and lead.

With respect to the Specified Product listed above, the violation commenced on the latter of the date that the Specified Product was first offered for sale in California or the date upon which California law codified the allowable level of the relevant chemical; has continued every day since the relevant date the violation commenced; and will continue every day henceforth until cadmium and lead are removed from the Specified Product, reduced to allowable levels, or until a “clear and reasonable” warning is provided to consumers by the Noticed Parties, as applicable, in accordance with the law.



Pursuant to Title 27, C.C.R. § 25903(b), copies of the following documents are attached hereto for reference by the Noticed Parties:

- (i) "The Safe Drinking Water and Toxic Enforcement act of 1986 (Proposition 65): A Summary."

Pursuant to Title 11, C.C.R. § 3100, the "Certificate of Merit" is attached hereto.

HLF intends to file a lawsuit after 60 days based on the facts set forth in this Notice. Meanwhile we encourage a prompt resolution of this matter within the said period of 60 days where the Noticed Parties agree in a written agreement to (1) eliminate or reduce cadmium and lead to an allowable level in the Specified Products or, as an alternative, (2) provide a Proposition 65- compliant warning on the label of the Specified Products and at the point of sale; and (3) pay applicable civil penalties and costs of bringing this action.

Prompt action of the Noticed Parties on this Notice will prevent further consumer exposures to a dangerous chemical without warning, therefore rectifying these alleged ongoing violations of the California law and afford the Noticed Parties the opportunity to avoid increasing costs associated with noncompliance and costly litigation.

Please direct all communications regarding this Notice to this office.

Sincerely,



Aida Poulsen | Managing attorney | NY | CA
contact@poulsenlaw.org



ATTACHMENTS

1. Certificate of Merit;
2. Confidential Factual Information supporting Certificate of Merit (to Attorney General only);
3. Certificate of Service;
4. Appendix “A” - “The Safe Drinking Water and Toxic Enforcement act of 1986 (Proposition 65): A Summary” (to the Noticed Parties only);





To:	California Attorney General
Notice of Violation:	August 26, 2022
Noticing Party:	Chemical Toxin Working Group Inc. dba Healthy Living Foundation Inc.
Noticed Parties:	The Kroger Co., Ralphs Grocery Company, Hughes Markets, Inc. dba Ralphs, and Instacart

August 26, 2022

CERTIFICATE OF MERIT
Health and Safety Code Section 25249.7(d)
To the Notice of Violation

I, Aida Poulsen, attorney at law, hereby declare:

This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the parties identified in the notices have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.

I am the attorney for the Noticing Party.

I have reviewed the facts of this case and have consulted with one or more persons with relevant and appropriate experience and expertise who have reviewed facts, studies, and/or other data regarding the alleged exposures to the listed chemical that is the subject of the attached Notice of Violation dated August 26, 2022 (the "Notice").

I have reviewed the laboratory testing results for the chemical subject to the Notice and rely on these results. The testing was conducted by a reputable accredited testing laboratory and by experienced scientists with doctoral and other degrees in relevant sciences. The facts, studies and other data derived through this investigation overwhelmingly demonstrate that the alleged violators have exposed persons to the listed chemical that is the subject of the Notice and is known to the State of California to cause reproductive and/or developmental harm, and/or cancer.

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.

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: August 26, 2022

By:



Aida Poulsen | Managing attorney | NY | CA
contact@poulsenlaw.org



CERTIFICATE OF SERVICE

I, Jonathan Newell, am over the age of eighteen years and am not a party to the action, process or case related to or arising out of the Notice of Violation being served under this Certificate of Service. My address is 18653 Ventura Blvd., Ste. 136, Tarzana, CA 91356.

On August 26, 2022, between 11:00 a.m. and 5:00 p.m. Pacific Time, I served the following documents:

1. Notice of Violations of California Health & Safety Code Section 25249.5 et seq. by The Kroger Co., Ralphs Grocery Company, Hughes Markets, Inc. dba Ralphs, and Instacart;
2. Certificate of Merit;
3. Appendix "A" - "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 parties below, and causing it to be deposited at a United States Postal Service Office in Los Angeles County, California, for delivery by Certified Mail:

William Rodney McMullen, Current President or CEO The Kroger Co. 1014 Vine Street Cincinnati, Ohio 45202	William Rodney McMullen, Current President or CEO The Kroger Co. c/o Corporation Service Company 3366 Riverside Drive, Suite 103 Upper Arlington, OH 43221
Christine S. Wheatley, Current President or CEO Ralphs Grocery Company 1014 Vine Street Cincinnati, Ohio 45202	Christine S. Wheatley, Current President or CEO Ralphs Grocery Company c/o Corporation Service Company Which Will Do Business In California As CSC - Lawyers Incorporating Service 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833
Christine S. Wheatley, Current President or CEO Ralphs Grocery Company c/o Corporation Service Company 3366 Riverside Drive, Suite 103 Upper Arlington, OH 43221	Thomas L Schwilke, Current President or CEO Hughes Markets, Inc. dba Ralphs 1014 Vine Street Cincinnati, Ohio 45202
Thomas L Schwilke, Current President or CEO Hughes Markets, Inc. dba Ralphs c/o Corporation Service Company Which Will Do Business In California As CSC - Lawyers Incorporating Service 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833	Fidji Simo or Current Chief Executive Officer or President Instacart 50 Beale Street, Suite 600 San Francisco, CA 94105



Fidji Simo or Current Chief Executive Officer or President Instacart c/o Cogency Global, Inc. 1325 J. Street, Ste 1550 Sacramento, CA 95814	Fidji Simo or Current Chief Executive Officer or President Instacart c/o Cogency Global, Inc. 850 New Burton Rd., Ste 201 Dover, DE 19904
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On August 26, 2022, between 11:00 a.m. and 11:30 p.m. Pacific Time, I served the following documents:

1. Notice of Violations of California Health & Safety Code Section 25249.5 et seq. by The Kroger Co., Ralphs Grocery Company, Hughes Markets, Inc. dba Ralphs, and Instacart;
2. Certificate of Merit;
3. Confidential Factual Information and Supporting Documentation Required by Title 11, C.C.R. § 3102

on the following parties by filing electronically a true and correct copy thereof as permitted through the website of the California Office of the Attorney General via link at oag.ca.gov/prop65:

State of California Department of Justice;
Office of the Attorney General of California.

On August 26, 2022, between 11:00 a.m. and 5:00 p.m. Pacific Time, I served the following documents:

1. Notice of Violations of California Health & Safety Code Section 25249.5 et seq. by The Kroger Co., Ralphs Grocery Company, Hughes Markets, Inc. dba Ralphs, and Instacart;
2. Certificate of Merit

on the following parties below by placing a true and correct copy thereof in a sealed envelope, addressed to each of the District Attorney and City Attorney offices listed below, and causing each envelope to be deposited at a United States Postal Service mail box for delivery by First Class Mail:

District Attorney Alpine County PO Box 248 Markleeville, CA 96120	District Attorney Lake County 255 North Forbes Street Lakeport, CA 95453	District Attorney Sierra County PO Box 457 Downieville, CA 95936
District Attorney Amador County	District Attorney Los Angeles County	District Attorney's Office Siskiyou County Courthouse

282 11th Avenue, Suite 2612
New York, New York 10001



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District Attorney Colusa County 310 6 th Street Colusa, CA 95932	District Attorney Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354
District Attorney Del Norte County 450 H Street, Suite 171 Crescent City, CA 95531	District Attorney Mendocino County PO Box 1000 Ukiah, CA 95482	District Attorney Sutter County 446 Second Street Yuba City, CA 95991
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District Attorney Imperial County 940 West Main Street, Suite 102 El Centro, CA 92243	District Attorney San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
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District Attorney Kings County 1400 West Lacey Blvd. Hanford, CA 93230	District Attorney Mono County Post Office Box 617 Bridgeport, CA 93517	
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On August 26, 2022, between 11:00 a.m. and 11:30 p.m. Pacific Time, I served the following documents:

1. Notice of Violations of California Health & Safety Code Section 25249.5 et seq. by The Kroger Co., Ralphs Grocery Company, Hughes Markets, Inc. dba Ralphs, and Instacart;
2. Certificate of Merit

on each of the parties below, all of which have requested electronic service only via the following email addresses:

Alameda County District Attorney CEPDProp65@acgov.org	Calaveras County District Attorney Prop65Env@co.calaveras.ca.us
Contra Costa County District Attorney sgrassini@contracostada.org	Inyo County District Attorney inyoda@inyocounty.us
Lassen County District Attorney mlatimer@co.lassen.ca.us	Mariposa County District Attorney meda@mariposacounty.org
Merced County District Attorney Prop65@countyofmerced.com	Monterey County District Attorney Prop65DA@co.monterey.ca.us
Napa County District Attorney CEPD@countyofnapa.org	Nevada County District Attorney DA.Prop65@co.nevada.ca.us
Placer County District Attorney Prop65@placer.ca.gov	Plumas County District Attorney davidhollister@countyofplumas.com
Riverside County District Attorney Prop65@rivcoda.org	Sacramento County District Attorney Prop65@sacda.org
San Diego City Attorney CityAttyProp65@sandiego.gov	San Diego County District Attorney SanDiegoDAProp65@sdcdca.org
San Francisco County District Attorney alethea.sargent@sfgov.org	San Francisco City Attorney Valerie.Lopez@sfcityatty.org
San Joaquin County District Attorney DA DAConsumer.Environmental@sjcda.org	San Luis Obispo County District Attorney edobroth@co.slo.ca.us
Santa Barbara County District Attorney DAProp65@co.santa-barbara.ca.us	Santa Clara County District Attorney EPU@da.sccgov.org
Santa Cruz County District Attorney Prop65DA@santacruzcounty.us	Sonoma County District Attorney jbarnes@sonoma-county.org
Tulare County District Attorney Prop65@co.tulare.ca.us	Ventura County District Attorney daspecialops@ventura.org
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I, Jonathan Newell, declare under penalty of perjury that the foregoing is true and correct.

Signature

Jonathan Newell

18653 Ventura Blvd., Ste. 136
Tarzana, CA 91356

August 26, 2022