



9541745

Michael Freund SBN 99687
Law Office of Michael Freund
1915 Addison Street
Berkeley, CA 94704
Telephone: (510) 540-1992
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ENDORSED
FILED
ALAMEDA COUNTY

NOV 22 2011

CLERK OF THE SUPERIOR COURT
BY _____

Attorney for Plaintiff David Steinman

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA**

DAVID STEINMAN

Plaintiff,

v.

THE KROGER CO. and DOES 1-100,

Defendants.

Case No. RG10507763

~~PROPOSED~~ CONSENT
JUDGMENT

Date: November 22, 2011

Time: 3:00 p.m.

Dept.: 512

I. INTRODUCTION

1.1 On April 5, 2010, Plaintiff David Steinman as a private attorney general and in the public interest filed a Complaint for Injunctive and Declaratory Relief and Civil Penalties against Defendant The Kroger Co. ("Kroger"). The Complaint alleges that Kroger violated Health and Safety Code section 25249.6 of the Safe Drinking Water and Toxic Enforcement Act of 1986 (also known as "Proposition 65,") through the sale of Kroger Pyrithione Zinc Dandruff Shampoo ("the Covered Product") by failing to provide a clear and reasonable warning.

1.2 The Complaint is based on allegations contained in a Notice of Violation dated January 19, 2010, served on the California Attorney General, other public enforcers and Kroger. A true and correct copy of the Notice of Violation is attached hereto as Exhibit A.

1.3 Plaintiff David Steinman is an individual interested in the enforcement of Proposition 65.

1.4 Defendant Kroger is a business entity that distributes the Covered Product. Kroger is a company that employs ten or more persons.

1.5 The Parties enter into this Consent Judgment in order to achieve a full settlement of disputed claims between the Parties as alleged in the Complaint for the purpose of avoiding prolonged litigation. Plaintiff David Steinman has diligently prosecuted this matter and is settling this case in the public interest.

1.6 Nothing in the Consent Judgment shall be construed as an admission by Kroger of any fact, issue of law or violation of law, nor shall compliance with the Consent Judgment constitute or be construed as an admission by Kroger of any fact, issue of law or violation of law, at any time, for any purpose. Nothing in the Consent Judgment shall prejudice, waive or impair any right, remedy or defense that Kroger may have in any other or further legal proceedings. Nothing in the Consent Judgment or any document referred to herein, shall be construed as giving rise to any presumption or inference of admission or concession by Kroger as to any fault, wrongdoing or liability whatsoever.

1.7 As of March 1, 2011, Kroger represents that the Covered Product has been reformulated.

II. JURISDICTION AND VENUE

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over the subject matter of this action and personal jurisdiction over the Parties, that

venue is proper in this Court, and that this Court has jurisdiction to enter a Consent Judgment pursuant to the terms set forth herein.

III. INJUNCTIVE RELIEF -REFORMULATION AND TESTING

3.1 Reformulation of Kroger Pyrithione Zinc Dandruff Shampoo

As of the effective date of this agreement, Kroger shall not ship, distribute, market or sell (or cause to be shipped, distributed, marketed or sold) anywhere any Covered Product containing more than 10 parts per million ("ppm") of 1,4-dioxane as measured using the quality control methodology set forth in Exhibit B, unless Kroger has provided a clear and reasonable warning consistent with Proposition 65 and as set forth in Section 3.2.

3.2 Clear and Reasonable Warning:

In the event Kroger ships, distributes, markets or sells the Covered Product in California after the effective date of the Agreement, that contains more than 10 ppm of 1,4-dioxane, Kroger shall provide the following clear and reasonable warning to consumers:

"WARNING: This product contains a chemical known to the State of California to cause cancer."

In the event that this warning is required, the warning shall be prominently affixed to or printed on the container of the Covered Product so as to be clearly conspicuous, as compared with other statements or designs on the label as to render it likely to be read and understood by an ordinary purchaser or user of the product.

3.3 Certification Requirements and Testing

3.3.1 In the event that Kroger obtains information through a source other than the testing set forth in Section 3.3.2 of this Consent Judgment, that one or more lots of the Covered Product manufactured after the effective date of the Agreement, for sale in California or for distribution to a

third party for retail sale in California contains more than 10 ppm of 1,4-dioxane, Kroger shall have thirty (30) days after receipt of the data, product specifications including product lot code information, and analysis substantiating such levels in which to verify such information. Hereinafter, this date shall be referred to as the "verification date." If the information is demonstrated to be accurate, through testing following the protocol specified in Exhibit B, Kroger shall take steps to ensure that further production lots of the Covered Product contains no more than 10 ppm of 1,4-dioxane, as defined by the quality control methodology set forth in Exhibit B. If Kroger cannot, within sixty (60) days of the verification date ensure the product contains no more than 10 ppm of 1,4-dioxane, as defined by the quality control methodology set forth in Exhibit B, then within 60 days of the verification, Kroger shall elect either to discontinue the distribution for sale in California of the Covered Product or provide a clear and reasonable warning pursuant to Section 3.2.

3.3.2 Commencing no later than thirty (30) days after the Notice of Entry of Judgment, Kroger shall, on a quarterly basis, randomly select five (5) samples of each Covered Product for testing to confirm that the product conforms to the reformulation standard set forth in section 3.1.

All testing pursuant to this Consent Judgment shall be performed by a laboratory certified by the California Environmental Laboratory Accreditation Program for the analysis of volatile organics in water or a laboratory that is approved by, accredited by, or registered with the United State Food & Drug Administration for the analysis of volatile organics in water. The laboratory shall conduct the testing according to the protocol attached as Exhibit B hereto.

Kroger shall not be required to conduct further testing of the Covered Product as long as the Covered Product meets the reformulation standard set forth in section 3.1 for four consecutive quarters.

3.3.3 If any Covered Product is found during the first four (4) consecutive quarters to not meet the reformulation standard set forth in section 3.1, Kroger shall continue to test that specific Covered Product for an additional four (4) consecutive quarters or until the specific Covered Product meets the reformulation standard set out in Section 3.1 for four (4) consecutive quarters, whichever occurs first.

If after eight (8) quarters of testing, any Covered Product fails to comply with the reformulation standard set forth in Section 3.1 for four (4) consecutive quarters, then Kroger shall, within sixty (60) days of the last test, provide the warning set forth in Section 3.2 or discontinue distribution for sale in California of that Covered Product.

Kroger shall retain copies of its test data obtained pursuant to Section 3.3 for a period of three years from the date testing commenced and shall provide all test data to David Steinman and the Attorney General upon written request.

IV. PAYMENT

In full and final satisfaction of civil penalties, payment in lieu of civil penalties, ERC's costs of litigation and attorney's fees, Kroger shall make a total payment of \$35,000.00, payable within ten (10) business days of receiving the Notice of Entry of Consent Judgment. Said payments shall be for the following:

\$3,500.00 payable as civil penalties pursuant to Health & Safety Code Section 25249.7 (b) (1). Of this amount, \$2,625.00 shall be payable to the Office of Environmental Health Hazard Assessment ("OEHHA") and \$875.00 shall be payable to Freedom Press. Health & Safety Code Section 25249.12 (c) (1) & (d). Kroger shall send both payments to David Steinman's counsel who shall be responsible to forward the civil penalty payment to OEHHA along with a copy of the transmittal to Kroger.

\$13,061.00 payable to Freedom Press which includes: A) : A) activities directly related to the investigation and research of consumer products in the marketplace that may contain Proposition 65 listed chemicals, the purchasing, organizing and storage of these products, the testing of those products for lead, arsenic and other toxic chemicals, research into alternatives to the use of toxic chemicals, post settlement monitoring of these products and the continued enforcement of Proposition 65; B) \$2,689.00 as reimbursement to David Steinman for reasonable investigation costs associated with the enforcement of Proposition 65 and other costs incurred as a result of investigating, bringing this matter to Defendant's attention, litigating and negotiating this settlement. ERC's Tax Identification No. is 271312633.

\$15,750.00 payable to Michael Freund as reimbursement of David Steinman's attorney's fees. Kroger's payments shall be mailed to the Law Office of Michael Freund.

V. RELEASE AND CLAIMS COVERED

This Consent Judgment is a full, final and binding resolution and release between David Steinman and Kroger, its parents, shareholders, divisions, subdivisions, subsidiaries, sister companies, affiliates, cooperative members, licensors, licensees, retailers, distributors, wholesalers, agents and representatives, and the officers, directors, employees, attorneys, agents, representatives, predecessors, successors, and assigns of any of them, ("Released Parties") of any violation of Proposition 65 or its implementing regulations or any other statutory or common law claims that have been or could have been asserted in the Complaint for failure to provide clear and reasonable warnings of exposure to 1,4-dioxane from the use of the Covered Product, or any other claim based on the facts or conduct alleged in the Complaint as to such product.

Furthermore, this Consent Judgment is a full, final and binding resolution and release between David Steinman, acting in the public interest pursuant to Health & Safety Code Section 25249.7

(d) and Kroger, its parents, shareholders, divisions, subdivisions, subsidiaries, sister companies, affiliates, cooperative members, licensors, licensees, retailers, distributors, wholesalers, agents and representatives, and the officers, directors, employees, attorneys, agents, representatives, predecessors, successors, and assigns of any of them, ("Released Parties") of any violation of Proposition 65 or its implementing regulations for failure to provide clear and reasonable warnings of exposure to 1,4-dioxane from the use of the Covered Product.

Kroger waives all rights to institute any form of legal action against David Steinman and Freedom Press, Inc., its employees, attorneys, agents, and representatives ("the Releasees") for all actions or statements made or undertaken by the Releasees in the course of seeking enforcement of Proposition 65 in this Action. Kroger also agrees to indemnify and hold harmless Plaintiff from any such legal action by any of the Released Parties.

VI. CONTINUING OBLIGATIONS

Nothing herein shall be construed as diminishing Kroger's continuing obligations to comply with Proposition 65.

VII. SEVERABILITY OF UNENFORCEABLE PROVISIONS

In the event that, after entry of this Consent Judgment in its entirety, any of the provisions hereof are subsequently held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

VIII. ENFORCEMENT OF CONSENT JUDGMENT

David Steinman may, by motion or as otherwise provided for enforcement of Judgments, seek relief from this Superior Court of the State of California to enforce the terms and conditions contained in this Consent Judgment after its entry by the Court.

IX. APPLICATION OF CONSENT JUDGMENT

This Consent Judgment entered by the Court shall apply to, be binding upon and inure to the benefit of Kroger, its parents, subsidiaries, affiliates, divisions, subdivisions, officers, directors, shareholders, employees, agents, attorneys, suppliers, manufacturers, successors and assigns, and upon David Steinman on his own behalf and on behalf of the general public and the public interest, as set forth in Paragraph V, as well as to Mr. Steinman's, employees, agents, successors, attorneys and assigns.

X. MODIFICATION OF CONSENT JUDGMENT

This Consent Judgment entered by the Court may be modified only upon written agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon a regularly-noticed motion of any Party to the Consent Judgment as provided by law and upon entry of a modified Consent Judgment by the Court.

XI. RETENTION OF JURISDICTION

This Court shall retain jurisdiction of this matter to enforce, modify or terminate the Consent Judgment.

XII. AUTHORITY TO STIPULATE TO THIS CONSENT JUDGMENT

Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party he or she represents to enter into this Consent Judgment and to execute it on behalf of the party represented and legally to bind that party.

XIII. COURT APPROVAL

This Consent Judgment shall be effective only after it has been executed by the Court ("the effective date."). Otherwise, it shall be of no force or effect and cannot be used in any proceeding for any purpose.

XIV. EXECUTION IN COUNTERPARTS

This Consent Judgment may be executed in counterparts and/or by facsimile, which taken together shall be deemed to constitute one document.

XV. NOTICES

All notices required to be given to either Party to this Consent Judgment by the other shall be sent to the following agents:

FOR DAVID STEINMAN:

David Steinman
Freedom Press, Inc.
1801 Chart Trail
Topanga, CA 90290

Michael Bruce Freund
Law Offices of Michael Freund
1915 Addison Street
Berkeley, CA 94704
Telephone: (510) 540-1992
Facsimile: (510) 540-5543

FOR THE KROGER CO.:

Steven J. Prough, Esq.
Vice President, Legal Services
Ralphs Grocery Company
The KrogerFood 4 Less/Food Co.
1014 Vine Street
Cincinnati, OH 45202
P.O. Box 54143
Los Angeles, CA 90054

Lisa Cole
Nixon Peabody, LLP
2 Palo Alto Square
3000 El Camino Real, Suite 500
Palo Alto, CA 94306
Telephone: (650) 320-7700
Facsimile: (650) 320-7701

XVI. GOVERNING LAW

The validity, construction and performance of this Consent Judgment shall be governed by the laws of the State of California.

XVII. DRAFTING

The terms of this Consent Judgment have been reviewed by the respective counsel for the Parties to this Settlement prior to its signing, and each Party has had an opportunity to fully discuss the terms with counsel. The Parties agree that, in any subsequent interpretation and construction of this Consent Judgment entered thereon, the terms and provisions shall not be construed against either Party.

XVIII. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES

In the event a dispute arises with respect to either party's compliance with the terms of this Consent Judgment entered by the Court, the Parties shall meet either in person or by telephone and endeavor to resolve the dispute in an amicable manner. No action or motion may be filed in the absence of such a good faith attempt to resolve the dispute beforehand. In the event an action or motion is filed, however, the prevailing party may seek to recover costs and reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party" means a party who is successful in obtaining relief more favorable to it than the relief that the other party was amenable to providing during the parties' good faith attempt to resolve the dispute that is the subject of such enforcement action.

XIX. ENTIRE AGREEMENT

This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or

otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

XX. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF CONSENT JUDGMENT

This settlement has come before the Court upon the request of the Parties. The Parties request the Court to fully review this settlement and, being fully informed regarding the matters which are the subject of this action, to:

(1) Find that the terms and provisions of this Consent Judgment represent a fair and equitable settlement of all matters raised by the allegations of the Complaint, that the matter has been diligently prosecuted, and that the public interest is served by such settlement; and

(2) Make the findings pursuant to Health & Safety Code § 25249.7 (f)(4), approve the Settlement and approve this Consent Judgment.

IT IS SO STIPULATED:

THE KROGER CO.

Dated: 8/29, 2011


Steven J. Prough

Dated: _____, 2011

David Steinman

otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

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(1) Find that the terms and provisions of this Consent Judgment represent a fair and equitable settlement of all matters raised by the allegations of the Complaint, that the matter has been diligently prosecuted, and that the public interest is served by such settlement; and

(2) Make the findings pursuant to Health & Safety Code § 25249.7 (f) (4), approve the Settlement and approve this Consent Judgment.

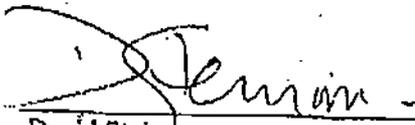
IT IS SO STIPULATED:

THE KROGER CO.

Dated: _____, 2011

Steven J. Prough

Dated: 8/29, 2011

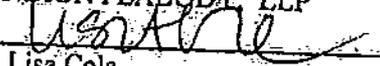


David Steinman

APPROVED AS TO FORM:

Dated: Aug 30, 2011

NIXON PEABODY, LLP



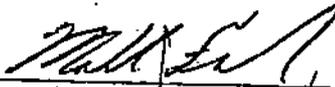
Lisa Cole

Attorney for Defendant

The Kroger Co.

Dated: August 30, 2011

LAW OFFICE OF MICHAEL FREUND



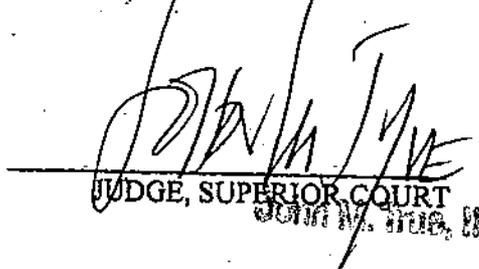
Michael Freund

Attorney for Plaintiff

David Steinman

IT IS SO ORDERED:

Dated: 11-28th 11



JUDGE, SUPERIOR COURT

JOHN W. HOGE, JUDGE

MICHAEL FREUND
ATTORNEY AT LAW
1915 ADDISON STREET
BERKELEY, CALIFORNIA 94704-1101

TEL 510/540-1992
FAX 510/540-5543
EMAIL FREUNDI@AOL.COM

January 19, 2010

Re: Notice of Violation Against The Kroger Co. for Violation of California Health & Safety Code Section 25249.6

Dear Prosecutors:

I represent David Steinman, a committed environmentalist, journalist, consumer health advocate, publisher and author. His major books include *Diet for a Poisoned Planet* (1990, 2007); *The Safe Shopper's Bible* (1995); *Living Healthy in a Toxic World* (1996); and *Safe Trip to Eden: Ten Steps to Save the Planet Earth from Global Warming Meltdown* (2007). Through this Notice of Violation, Mr. Steinman seeks to reduce exposure to 1,4 Dioxane.

This letter constitutes notification that The Kroger Co. has violated the warning requirement of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with section 25249.5 of the Health and Safety Code).

In particular, this company has manufactured and distributed products which have exposed and continue to expose numerous individuals within California to 1,4 Dioxane. This chemical was listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer on January 1, 1988. The time period of these violations commenced one year after the listed dates above. The primary route of exposure has been through dermal contact with the products. Additional exposures may occur through oral and inhalation exposure.

The Kroger Co. is exposing people to 1,4 Dioxane from the following product: Kroger Pyrithione Zinc Dandruff Shampoo.

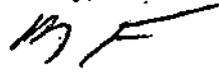
Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to certain listed chemicals. The Kroger Co. is in violation of Proposition 65 because it failed to provide a warning to persons using their products that they are being exposed to 1,4 Dioxane. (22 C.C.R. section 12601.) While in the course of doing business, the company is knowingly and intentionally exposing people to this chemical, without first providing clear and reasonable warning. (Health and Safety Code section 25249.6.) The method of warning should be a warning that appears on the product's label. 22 C.C.R. section 12601 (b)(1) (A).

Proposition 65 requires that notice and intent to sue be given to a violator 60-days before the suit is filed. With this letter, David Steinman gives notice of the alleged violation to the noticed party and the appropriate governmental authorities. This notice covers all violations of Proposition 65 that are currently known to Mr. Steinman from information now available to us. Mr. Steinman is continuing his investigation that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, and

referenced as Appendix A, has been provided to the noticed party.

If you have any questions, please contact my office at your earliest convenience.

Sincerely,

A handwritten signature in black ink, consisting of a stylized 'M' followed by a 'F' with a long horizontal stroke extending to the right.

Michael Freund

cc: David Steinman

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7 (d)

I, Michael Freund hereby declare:

1. This Certificate of Merit accompanies the attached Notice of Violation in which it is alleged that the party identified in the Notice 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 David Steinman. Mr. Steinman is a committed environmentalist, journalist, consumer health advocate, publisher and author. The Notice of Violation alleges that the party identified has exposed persons in California to 1,4 Dioxane from its consumer product. Please refer to the Notice of Violation for additional details regarding the alleged violations.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the subject of the action. In particular, I have consulted with the primary chemist who conducted the laboratory testing for 1,4 Dioxane of this consumer product and I have relied on the testing results. The testing was conducted by a reputable testing laboratory by experienced scientists. These facts, studies or other data derived through this investigation overwhelmingly demonstrate that the party identified in the Notice exposes persons to 1,4 Dioxane through dermal contact. There may be additional exposures through inhalation and oral exposure.
4. Based on my consultation with an experienced scientist in this field, the results of laboratory testing, as well as the published studies on 1,4-Dioxane, it is clear that there is sufficient evidence that human exposures exist from exposure to the products from the noticed party.

Furthermore, as a result of the above, I have concluded that there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and the information did not prove that the alleged 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 California Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in 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: January 19, 2010



Michael Freund
Attorney for Center for David Steinman

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the County of Alameda. I am over the age of eighteen years and not a party to the within entitled action; my business address is 1915 Addison Street, Berkeley, California 94704. On January 19, 2010 I served the within:

Notice of Violation and Certificate of Merit (Supporting documentation pursuant to 11 CCR section 3102 sent to Attorney General only)

on the parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box in Oakland, California to said parties addressed as follows:

See Attached Service List

I, Michael Freund, declare under penalty of perjury that the foregoing is true and correct.

Executed on January 19, 2010 at Berkeley, California.



Michael Freund

SERVICE LIST

- District Attorney of Alameda County
1225 Fallon Street, Room 900
Oakland, CA 94612
- District Attorney of Colusa County
547 Market Street
Colusa, CA 95932
- District Attorney of Contra Costa County
627 Ferry Street
Martinez, CA 94553
- District Attorney of Alpine County
P.O. Box 248
Markleeville, CA 98120
- District Attorney of Del Norte County
450 H Street, Ste 171
Crescent City, CA 95531
- District Attorney of Amador County
708 Court Street, #202
Jackson, CA 95842
- District Attorney of Butte County
25 County Center Drive
Oroville, CA 95965
- District Attorney of El Dorado County
515 Main Street
Placerville, CA 95667
- District Attorney of Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249
- District Attorney of Fresno County
2220 Tulare Street, #1000
Fresno, CA 93721
- District Attorney of Glenn County
P.O. Box 430
Willows, CA 95988
- District Attorney of Kings County
1400 West Lacey
Hanford, CA 93230
- District Attorney of Lake County
255 N. Forbes Street
Lakeport, CA 95453
- District Attorney of Humboldt County
825 5th Street
Eureka, CA 95501
- District Attorney of Imperial County
839 Main Street
El Centro, CA 92243
- District Attorney of Lassen County
220 S. Lassen St., Ste 8
Susanville, CA 96130
- District Attorney of Inyo County
P.O. Drawer D
Independence, CA 93526
- District Attorney of Los Angeles County
210 W. Temple Street, Room 345
Los Angeles, CA 90012
- District Attorney of Madera County
209 West Yosemite Avenue
Madera, CA 93637
- District Attorney of Kern County
1215 Truxtun Avenue
Bakersfield, CA 93301
- District Attorney of Marin County
3501 Civic Center Dr., Room 130
San Rafael, CA 94903
- District Attorney of Mono County
P.O. Box 617
Bridgeport, CA 93517
- District Attorney of Mariposa County
P.O. Box 730
Mariposa, CA 95338
- District Attorney of Monterey County
230 Church Street, Bldg. 2
Salinas, CA 93901
- District Attorney of Mendocino County
P.O. Box 1000
Ukiah, CA 95482
- District Attorney of Napa County
931 Parkway Mall
Napa, CA 94559
- District Attorney of Merced County
2222 "M" Street
Merced, CA 95340
- District Attorney of Nevada County
201 Church St., Suite 8
Nevada City, CA 95959
- District Attorney of Orange County
401 Civic Ctr Drive West
Santa Ana, CA 92701
- District Attorney of Modoc County
204 S Court Street
Alturas, CA 96101-4020
- District Attorney of Placer County
11562 "B" Avenue
Auburn, CA 95603
- District Attorney of San Bernardino County
316 N. Mountain View Avenue
San Bernardino, CA 92415
- District Attorney of Plumas County
520 Main Street, Room 404
Quincy, CA 95971
- District Attorney of San Diego County
330 West Broadway, Suite 1320
San Diego, CA 92101
- District Attorney of Riverside County
4076 Main Street
Riverside, CA 92501
- District Attorney of San Francisco County
850 Bryant Street, Rm 325
San Francisco, CA 94103
- District Attorney of Sacramento County
901 "G" Street
Sacramento, CA 95814
- District Attorney of San Joaquin County
P.O. Box 990
Stockton, CA 95201
- District Attorney of San Luis Obispo County
1050 Monterey St, Room 450
San Luis Obispo, CA 93408
- District Attorney of San Benito County
419 Fourth Street, 2nd Floor
Hollister, CA 95023

District Attorney of San Mateo
County
400 County Ctr, 3rd Fl
Redwood City, CA 94063

District Attorney of Sierra County
Courthouse, P.O. Box 457
Downville, CA 95936

District Attorney of Santa Barbara
County
1105 Santa Barbara Street
Santa Barbara, CA 93101

District Attorney of Siskiyou County
P.O. Box 888
Yreka, CA 96097

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

District Attorney of Santa Clara
County
70 West Hedding Street, West
Wing
San Jose, CA 95110

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

District Attorney of Sonoma County
600 Administration Drive, Room
212J
Santa Rosa, CA 95403

District Attorney of Shasta County
1525 Court Street, Third Floor
Redding, CA 96001-1832

District Attorney of Stanislaus
County
800 11th Street, Room 200
PO BOX 442
Modesto, CA 95353

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

District Attorney of Ventura County
800 South Victoria Ave
Ventura, CA 93009

District Attorney of Tehama County
P.O. Box 619
Red Bluff, CA 96080

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

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

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

District Attorney of Tulare County
221 S. Mooney Ave, Room 224
Visalia, CA 93291

District Attorney of Tuolumne
County
423 No. Washington Street
Sonora, CA 95370

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

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

San Diego City Attorney's Office
1200 3rd Avenue #1820
San Diego, CA 92101

San Francisco City Attorney's
Office
City Hall, Room 234
San Francisco, CA 94102

California Attorney General's
Office
Attention: Proposition 65
Coordinator
1515 Clay Street, Suite 2000
P.O. Box 70550
Oakland, CA 94612

David Dillon, Chairman & CEO
The Kroger Co.
1014 Vine Street
Cincinnati, OH 45202

EXHIBIT B
PROTOCOL

Summary of Method:

An aliquot of sample (~1 g) is accurately weighed into a vial with 5 mL water and one gram of sodium sulfate. Internal standard (5 µg 1,4-Dioxane-d8) is added. The vial is capped and heated at 95 °C for 60 minutes. A one mL aliquot of the headspace over the sample is analyzed by direct injection using the following GCMS conditions or equivalent.

GCMS Conditions

Instrument: Agilent 5973N

Column: 25 m x 0.20 mm HP-624, 1.12 micron film

Column Temp: 40 °C (hold 3 min) to 100 °C at 10 °C/min, then to 180 °C at 25 °C/min (hold 5 min)

Injector Temp: 220 °C

Mass Range: Selected ion monitoring: masses 43, 58 and 88 (dioxane); 64 and 96 (dioxane-d8); 1.72 cycles per second

Quality control shall include at a minimum

1. Calibration using a blank and 4 standards over the range of 0.5 to 10 micrograms of 1,4-dioxane with a regression fit R squared >0.995.
2. A method blank analyzed just prior to the samples must be free of 1,4-dioxane (<1 ppm)
3. Continuing calibration standards should be analyzed after every 10 or fewer samples, and the result must be within 10% of the initial calibration.
4. With each batch of 20 or fewer samples, one of the samples must be analyzed in duplicate and as a spiked sample. QC limits for duplicates which exceed 5 ppm is <25% relative percent difference. QC limits for spiked samples is 75-125% recovery when the amount spiked is greater than or equal to the background in the unspiked sample.

CLERK'S CERTIFICATE OF MAILING

CASE NO: RG10-507763

CASE NAME: Steinman V. The Kroger Co.

I certify that I am not a party to this action and this correspondence was mailed first class, prepaid postage, in a sealed envelope to the parties at the addresses shown below. The mailing and this certification occurred at the place and on the date shown below:

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Date of mailing: November 23, 2011

By: STACY OXSEN, Deputy Clerk
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