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CLERK OF
THE SUPERIOR COURT
By Keisha Ghee, Deputy
CASE NUMBER:
RG21086254

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CLERK OF THE SUPERIOR COURT
By Michelle Hawkins
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ENVIRONMENTAL RESEARCH
CENTER, INC., a California non-profit
corporation

Plaintiff,

vs.

KERRY GROUP PLC; KERRY INC.;
KERRY FOODS INC.; KERRY
LUXEMBOURG S.A.R.L.; and DOES 1-
100

Defendants.

CASE NO. RG21086254

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: January 20, 2021
Trial Date: None set

1. INTRODUCTION
1.1 On January 20, 2021, Plaintiff Environmental Research Center, Inc. ("ERC"), a non-profit corporation, as a private enforcer and in the public interest, initiated this action by filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the "Complaint")

1 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*
2 (“Proposition 65”), against Kerry Group PLC, Kerry Inc., Kerry Foods Inc., and Kerry
3 Luxembourg S.A.R.L. (collectively “Kerry Group”) and Does 1-100. In this action, ERC
4 alleges that a number of products manufactured, distributed, or sold by Kerry Group contain
5 lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and expose
6 consumers to this chemical at a level requiring a Proposition 65 warning. These products
7 (referred to hereinafter individually as a “Covered Product” or collectively as “Covered
8 Products”) are: (1) Big Train Blended Crème Belgian Chocolate, (2) Fit Frappé Coffee Protein
9 Drink Mix Mocha, (3) Fit Frappé Chai Protein Drink Mix Spiced Chai Latte, (4) Fit Frappé
10 Chocolate Protein Drink Mix Chocolate, (5) Fit Frappé Coffee Protein Drink Mix Vanilla
11 Latte, (6) Fit Frappé Vanilla Protein Drink Mix Vanilla, (7) Fit Frappé Coffee Protein Drink
12 Mix Espresso, (8) Big Train Carb Conscious Lifestyle Spiced Chai, (9) Big Train Blended Ice
13 Coffee Chocolate Malt, (10) Big Train Blended Ice Coffee Vanilla No Sugar Added, (11) Big
14 Train Reduced Sugar Chai Tea Latte Vanilla Chai, (12) Big Train Blended Ice Coffee Decaf
15 Mocha, (13) Big Train Blended Ice Coffee Toffee Mocha, (14) Big Train Blended Ice Coffee
16 Kona Mocha, (15) Big Train Blended Ice Coffee Java Chip, (16) Big Train Mexican Spiced
17 Cocoa, (17) Big Train 20° Below Blended Crème Frozen Hot Chocolate, (18) Big Train
18 Blended Ice Coffee Peppermint Mocha, (19) Big Train Blended Ice Coffee Pumpkin Spice,
19 (20) Big Train Blended Ice Coffee Dulce de Leche, (21) Big Train Blended Ice Coffee
20 Espresso, (22) Big Train Blended Ice Coffee Decaf Vanilla, (23) Big Train Blended Ice Coffee
21 Chocolate Mint, (24) Big Train Chai Tea Latte Raspberry Chai, (25) Big Train Chai Tea Latte
22 Spiced Apple Chai, (26) Big Train Chai Tea Latte Decaf Spiced Chai, (27) Big Train Chai Tea
23 Latte Spiced Chai, (28) Big Train Chai Tea Pumpkin Pie, (29) Big Train Blended Crème
24 Cookies N Cream, (30) Big Train Blended Crème Hazelnut, (31) Big Train Blended Crème
25 Strawberry Banana, (32) Big Train Blended Crème Cake Batter, (33) Big Train Blended
26 Crème Vanilla Smoothie Base Mix No Sugar Added, (34) Big Train Blended Ice Coffee
27 Chocolate Peanut Butter, (35) Big Train Kidz Kreamz Blended Crème Cotton Candy, (36) Big
28 Train Blended Ice Coffee Caramel Latte, (37) Big Train Blended Ice Coffee Coffee, (38) Big

1 Train Kidz Kreamz Blended Crème Bubble Gum, (39) Big Train Blended Ice Coffee No Sugar
2 Added Mocha, (40) Big Train Blended Ice Coffee Mocha, (41) Big Train Chai Tea Latte
3 Vanilla Chai, (42) Big Train Dragonfly Blended Crème Honeydew, (43) Big Train Blended
4 Crème Vanilla Bean, (44) Big Train Blended Crème Watermelon, (45) Big Train Chai Tea
5 Latte Caramel Chai, (46) Big Train Chai Tea Latte Gingerbread Chai, and (47) Big Train Chai
6 Tea Latte Chocolate Chai.

7 1.2 ERC and Kerry Group are hereinafter referred to individually as a "Party" or
8 collectively as the "Parties."

9 1.3 ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
10 causes, helping safeguard the public from health hazards by reducing the use and misuse of
11 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
12 and encouraging corporate responsibility.

13 1.4 For purposes of this Consent Judgment, the Parties agree that each defendant is a
14 business entity each of which has employed ten or more persons at all times relevant to this
15 action, and qualifies as a "person in the course of doing business" within the meaning of
16 Proposition 65. Kerry Group manufactures, distributes, and/or sells the Covered Products.

17 1.5 The Complaint is based on allegations contained in ERC's Notices of Violation
18 dated May 28, 2020, July 10, 2020, August 5, 2020, September 3, 2020, and September 10,
19 2020 that were served on the California Attorney General, other public enforcers, and Kerry
20 Group ("Notices"). True and correct copies of the 60-Day Notices dated May 28, 2020, July
21 10, 2020, August 5, 2020, September 3, 2020, and September 10, 2020 are attached hereto as
22 *Exhibits A, B, C, D* and *E* and each is incorporated herein by reference. More than 60 days
23 have passed since the Notices were served on the Attorney General, public enforcers, and
24 Kerry Group and no designated governmental entity has filed a Complaint against Kerry Group
25 with regard to the Covered Products or the alleged violations.

26 1.6 ERC's Notices and Complaint allege that use of the Covered Products by
27 California consumers exposes them to lead without first receiving clear and reasonable
28 warnings from Kerry Group, which is in violation of California Health and Safety Code section

1 25249.6. Kerry Group denies all material allegations contained in the Notices and Complaint.

2 1.7 The Parties have entered into this Consent Judgment in order to settle,
3 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
4 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute
5 or be construed as an admission by any of the Parties or by any of their respective officers,
6 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
7 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,
8 issue of law, or violation of law.

9 1.8 Except as expressly set forth herein, nothing in this Consent Judgment shall
10 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in
11 any current or future legal proceeding unrelated to these proceedings.

12 1.9 The Effective Date of this Consent Judgment is the date on which it is entered
13 as a Judgment by this Court.

14 2. JURISDICTION AND VENUE

15 For purposes of this Consent Judgment and any further court action that may become
16 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
17 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
18 over Kerry Group as to the acts alleged in the Complaint, that venue is proper in Alameda County,
19 and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of
20 all claims up through and including the Effective Date that were or could have been asserted in
21 this action based on the facts alleged in the Notices and Complaint.

22 3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS

23 3.1 Beginning 60 days after the Effective Date ("the Compliance Date"), Kerry
24 Group shall be permanently enjoined from manufacturing for sale in the State of California,
25 "Distributing into the State of California," or directly selling in the State of California, any
26 Covered Product that exposes a person to a "Daily Lead Exposure Level" of more than 0.5
27 micrograms of lead per day unless it meets the warning requirements under Section 3.2. This
28 provision shall not apply to Covered Products manufactured prior to the Compliance Date so

1 long as such Covered Products are no longer in possession of or under the control of Kerry
2 Group as of the Compliance Date. For purposes of this Section, a Covered Product is not
3 “under the control of” Kerry Group if Kerry Group cannot reasonably ensure that a third party
4 will place a Warning on the product before it is shipped to a California consumer.

5 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
6 of California” shall mean to directly ship a Covered Product into California for sale in
7 California or to sell a Covered Product to a distributor that Kerry Group knows or has reason to
8 know will sell the Covered Product in California.

9 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure Level”
10 shall be measured in micrograms, and shall be calculated using the following formula:
11 micrograms of lead per gram of product, multiplied by grams of product per serving of the
12 product (using the serving size for a hot beverage, or where no hot beverage serving size is
13 provided, the serving size for an iced beverage), multiplied by servings of the product per day,
14 which equals micrograms of lead exposure per day, excluding, pursuant to Section 3.1.3,
15 amounts of allowances of lead in the ingredients listed in **Table 1** below. If the product label
16 does not have servings for a hot beverage or an iced beverage, then the largest serving size
17 appearing on the product label shall be used in calculating the “Daily Lead Exposure Level.”

18 **3.1.3** In calculating the Daily Lead Exposure Level for a Covered Product,
19 Kerry Group shall be allowed to deduct the amount of lead which is deemed “naturally
20 occurring” in any ingredient listed in **Table 1** that is contained in that Covered Product under the
21 following conditions: For each year that Kerry Group claims entitlement to a “naturally
22 occurring” allowance, Kerry Group shall provide ERC with the following information: (a) Kerry
23 Group must produce to ERC a list of each ingredient in the Covered Product for which a
24 “naturally occurring” allowance is claimed; (b) Kerry Group must provide ERC with
25 documentation of laboratory testing that complies with Sections 3.4.3 and 3.4.4 and that shows
26 the amount of lead, if any, contained in any ingredient listed in **Table 1** that is contained in the
27 Covered Product and for which Kerry Group intends to deduct “naturally occurring” lead; (c) If
28 the laboratory testing reveals the presence of lead in any ingredient listed in **Table 1** that is

1 contained in the Covered Product, Kerry Group shall be entitled to deduct up to the full amount
 2 of the allowance for that ingredient, as listed in Table 1, but not to exceed the total amount of
 3 lead actually contained in that ingredient in the Covered Product; and (d) If the Covered Product
 4 does not contain an ingredient listed in Table 1, Kerry Group shall not be entitled to a deduction
 5 for "naturally occurring" lead in the Covered Product for that ingredient. The information
 6 required by Sections 3.1.3 (a) and (b) shall be provided to ERC within thirty (30) days of the
 7 Effective Date or anniversary thereof for any year that Kerry Group shall claim entitlement to the
 8 "naturally occurring" allowance.

9 **TABLE 1**

10 INGREDIENT	ALLOWANCES OF AMOUNT OF LEAD
11 Calcium (Elemental)	Up to 0.8 micrograms/gram
12 Ferrous Fumarate	Up to 0.4 micrograms/gram
13 Zinc Oxide	Up to 8.0 micrograms/gram
14 Magnesium Oxide	Up to 0.4 micrograms/gram
15 Magnesium Carbonate	Up to 0.332 micrograms/gram
16 Magnesium Hydroxide	Up to 0.4 micrograms/gram
17 Zinc Gluconate	Up to 0.8 micrograms/gram
18 Potassium Chloride	Up to 1.1 micrograms/gram
19 Cocoa-powder	Up to 1.0 micrograms/gram
20 Chocolate Liquor	Up to 1.0 micrograms/gram
21 Cocoa Butter	Up to 0.1 micrograms/gram

22
 23
 24 **3.2 Clear and Reasonable Warnings**

25 If Kerry Group is required to provide a warning pursuant to Section 3.1, the following
 26 warning must be utilized ("Warning"):

27 **WARNING:** Consuming this product can expose you to chemicals including [lead] which
 28 is [are] known to the State of California to cause [cancer and] birth defects or other
 reproductive harm. For more information go to www.P65Warnings.ca.gov/food.

1 Kerry Group shall use the phrase "cancer and" in the Warning if Kerry Group has reason
2 to believe that the the "Daily Lead Exposure Level" is greater than 15 micrograms of lead as
3 determined pursuant to the quality control methodology set forth in Section 3.4 or if Kerry Group
4 has reason to believe that another Proposition 65 chemical is present which may require a cancer
5 warning.

6 The Warning shall be securely affixed to or printed upon the label of each Covered
7 Product and it must be set off from other surrounding information and enclosed in a box. In
8 addition, for any Covered Product sold over the internet, the Warning shall appear on the
9 Covered Product's primary display page or on the checkout page when a California delivery
10 address is indicated for any purchase of any Covered Product. An asterisk or other identifying
11 method must be utilized to identify which products on the checkout page are subject to the
12 Warning. The Warning may be provided through a clearly marked hyperlink using the word
13 "WARNING" in all capital and bold letters either on the Covered Product's primary display
14 page or on the checkout page so long as the hyperlink goes directly to a page prominently
15 displaying the Warning without content that detracts from the Warning. .

16 The Warning shall be at least the same size as the largest of any other health or safety
17 warnings also appearing on the website or on the label and the word "WARNING" shall be in all
18 capital letters and in bold print. No statements intended to or likely to have the effect of
19 diminishing the impact of the Warning on the average lay person shall accompany the Warning.
20 Further, no statements may accompany the Warning that state or imply that the source of the listed
21 chemical has an impact on or results in a less harmful effect of the listed chemical.

22 Kerry Group must display the above Warning with such conspicuousness, as compared
23 with other words, statements or designs on the label, or on its website, if applicable, to render the
24 Warning likely to be read and understood by an ordinary individual under customary conditions
25 of purchase or use of the product.

26 For purposes of this Consent Judgment, the term "label" means a display of written,
27 printed or graphic material that is printed on or affixed to a Covered Product or its immediate
28 container or wrapper.

1 **3.3 Conforming Covered Products**

2 A Conforming Covered Product is a Covered Product for which the "Daily Lead Exposure
3 Level" is no greater than 0.5 micrograms of lead per day as determined by the the exposure
4 methodology set forth in Section 3.1.2 and the quality control methodology described in Section
5 3.4, and that is not known by Kerry Group to contain other chemicals that violate Proposition 65's
6 safe harbor thresholds.

7 **3.4 Testing and Quality Control Methodology**

8 **3.4.1** Beginning within one year of the Effective Date, Kerry Group shall
9 arrange for lead testing of the Covered Products at least once a year for a minimum of five
10 consecutive years by arranging for testing of one randomly selected sample of each of the
11 Covered Products, in the form intended for sale to the end-user, which Kerry Group intends to
12 sell or is manufacturing for sale in California, directly selling to a consumer in California or
13 "Distributing into the State of California." If tests conducted pursuant to this Section demonstrate
14 that no Warning is required for a Covered Product during each of five consecutive years, then the
15 testing requirements of this Section will no longer be required as to that Covered Product.
16 However, if within five years after the Effective Date, Kerry Group changes ingredient suppliers
17 for any of the Covered Products and/or reformulates any of the Covered Products, Kerry Group
18 shall test that Covered Product to ensure compliance after such change is made.

19 **3.4.2** For purposes of measuring the "Daily Lead Exposure Level," the lead
20 detection result of the one randomly selected sample of each of the Covered Products will be
21 controlling.

22 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
23 laboratory method that complies with the performance and quality control factors appropriate
24 for the method used, including limit of detection and limit of quantification, sensitivity,
25 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass
26 Spectrometry ("ICP-MS") achieving a limit of quantification of less than or equal to 0.010
27 mg/kg.

28 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an

1 independent third party laboratory certified by the California Environmental Laboratory
2 Accreditation Program or an independent third-party laboratory that is registered with the
3 United States Food & Drug Administration.

4 3.4.5 Nothing in this Consent Judgment shall limit Kerry Group's ability to
5 conduct, or require that others conduct, additional testing of the Covered Products, including
6 the raw materials used in their manufacture.

7 3.4.6 Within thirty (30) days of ERC's written request, Kerry Group shall
8 deliver lab reports obtained pursuant to Section 3.4 to ERC. Kerry Group shall retain all test
9 results and documentation for a period of five years from the date of each test.

10 4. SETTLEMENT PAYMENT

11 4.4 In full satisfaction of all potential civil penalties, additional settlement
12 payments, attorney's fees, and costs, Kerry Group shall make a total payment of \$100,000.00
13 ("Total Settlement Amount") to ERC within 5 days of the Effective Date ("Due Date"). Kerry
14 Group shall make this payment by wire transfer to ERC's account, for which ERC will give
15 Kerry Group the necessary account information. The Total Settlement Amount shall be
16 apportioned as follows:

17 4.5 \$34,750.00 shall be considered a civil penalty pursuant to California Health
18 and Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$26,062.50) of the civil penalty
19 to the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
20 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
21 Code section 25249.12(c). ERC will retain the remaining 25% (\$8,687.50) of the civil penalty.

22 4.6 \$9,837.81 shall be distributed to ERC as reimbursement to ERC for
23 reasonable costs incurred in bringing this action.

24 4.7 \$26,001.17 shall be distributed to ERC as an Additional Settlement Payment
25 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d)
26 and 3204. ERC will utilize the ASP for activities that address the same public harm as
27 allegedly caused by Defendants in this matter. These activities are detailed below and support
28 ERC's overarching goal of reducing and/or eliminating hazardous and toxic chemicals in

1 dietary supplement products in California. ERC's activities have had, and will continue to
2 have, a direct and primary effect within the State of California because California consumers
3 will be benefitted by the reduction and/or elimination of exposure to lead in dietary
4 supplements and/or by providing clear and reasonable warnings to California consumers prior
5 to ingestion of the products.

6 Based on a review of past years' actual budgets, ERC is providing the following list of
7 activities ERC engages in to protect California consumers through Proposition 65 citizen
8 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
9 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary
10 supplement products that may contain lead and are sold to California consumers. This work
11 includes continued monitoring and enforcement of past consent judgments and settlements to
12 ensure companies are in compliance with their obligations thereunder, with a specific focus on
13 those judgments and settlements concerning lead. This work also includes investigation of new
14 companies that ERC does not obtain any recovery through settlement or judgment; (2)
15 VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining ERC's Voluntary
16 Compliance Program by acquiring products from companies, developing and maintaining a
17 case file, testing products from these companies, providing the test results and supporting
18 documentation to the companies, and offering guidance in warning or implementing a self-
19 testing program for lead in dietary supplement products; and (3) "GOT LEAD" PROGRAM
20 (up to 5%): maintaining ERC's "Got Lead?" Program which reduces the numbers of
21 contaminated products that reach California consumers by providing access to free testing for
22 lead in dietary supplement products (Products submitted to the program are screened for
23 ingredients which are suspected to be contaminated, and then may be purchased by ERC,
24 catalogued, sent to a qualified laboratory for testing, and the results shared with the consumer
25 that submitted the product).

26 ERC shall be fully accountable in that it will maintain adequate records to document
27 and will be able to demonstrate how the ASP funds will be spent and can assure that the funds
28 are being spent only for the proper, designated purposes described in this Consent Judgment.

1 ERC shall provide the Attorney General, within thirty days of any request, copies of
2 documentation demonstrating how such funds have been spent.

3 4.8 \$29,411.02 shall be distributed to ERC for its in-house legal fees. Except as
4 explicitly provided herein, each Party shall bear its own fees and costs.

5 4.6 In the event that Kerry Group fails to remit the Total Settlement Amount owed
6 under Section 4 of this Consent Judgment on or before the Due Date, Kerry Group shall be
7 deemed to be in material breach of its obligations under this Consent Judgment. ERC shall
8 provide written notice of the delinquency to Kerry Group via electronic mail. If Kerry Group
9 fails to deliver the Total Settlement Amount within five (5) days from the written notice, the
10 Total Settlement Amount shall accrue interest at the statutory judgment interest rate provided
11 in the California Code of Civil Procedure section 685.010. Additionally, Kerry Group agrees to
12 pay ERC's reasonable attorney's fees and costs for any efforts to collect the payment due
13 under this Consent Judgment.

14 5. MODIFICATION OF CONSENT JUDGMENT

15 5.1 This Consent Judgment may be modified only as to injunctive terms (i) by
16 written stipulation of the Parties and upon entry by the Court of a modified consent judgment
17 or (ii) by motion of either Party pursuant to Section 5.3 and upon entry by the Court of a
18 modified consent judgment.

19 5.2 If Kerry Group seeks to modify this Consent Judgment under Section 5.1,
20 then Kerry Group must provide written notice to ERC of its intent ("Notice of Intent"). If ERC
21 seeks to meet and confer regarding the proposed modification in the Notice of Intent, then ERC
22 must provide written notice to Kerry Group within thirty (30) days of receiving the Notice of
23 Intent. If ERC notifies Kerry Group in a timely manner of ERC's intent to meet and confer,
24 then the Parties shall meet and confer in good faith as required in this Section. The Parties
25 shall meet in person or via telephone within thirty (30) days of ERC's notification of its intent
26 to meet and confer. Within thirty (30) days of such meeting, if ERC disputes the proposed
27 modification, ERC shall provide to Kerry Group a written basis for its position. The Parties
28 shall continue to meet and confer for an additional thirty (30) days in an effort to resolve any

1 remaining disputes. Should it become necessary, the Parties may agree in writing to different
2 deadlines for the meet-and-confer period.

3 **5.3** In the event that Kerry Group initiates or otherwise requests a modification
4 under Section 5.1, and the meet and confer process leads to a joint motion or application for a
5 modification of the Consent Judgment, Kerry Group shall reimburse ERC its costs and
6 reasonable attorney’s fees for the time spent in the meet-and-confer process and filing and
7 arguing the motion or application.

8 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
9 **JUDGMENT**

10 **6.4** This Court shall retain jurisdiction of this matter to enforce, modify, or
11 terminate this Consent Judgment.

12 **6.5** If ERC alleges that any Covered Product fails to qualify as a Conforming
13 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
14 inform Kerry Group in a reasonably prompt manner of its test results, including information
15 sufficient to permit Kerry Group to identify the Covered Products at issue. Kerry Group shall,
16 within thirty (30) days following such notice, provide ERC with testing information, from an
17 independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4,
18 demonstrating Kerry Group’s compliance with the Consent Judgment. The Parties shall first
19 attempt to resolve the matter prior to ERC taking any further legal action.

20 **7. APPLICATION OF CONSENT JUDGMENT**

21 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
22 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
23 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,
24 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no
25 application to any Covered Product that is distributed or sold exclusively outside the State of
26 California and that is not used by California consumers.

27 **8. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

28 **8.4** This Consent Judgment is a full, final, and binding resolution between ERC,

1 on behalf of itself and in the public interest, and Kerry Group and its respective officers,
 2 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
 3 franchisees, licensees, customers (not including private label customers of Kerry Group),
 4 distributors, wholesalers, retailers, and all other upstream and downstream entities in the
 5 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any
 6 of them (collectively, "Released Parties"). ERC, on behalf of itself and in the public interest,
 7 hereby fully releases and discharges the Released Parties from any and all claims, actions,
 8 causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses
 9 asserted, or that could have been asserted from the handling, use, or consumption of the
 10 Covered Products, as to any alleged violation of Proposition 65 or its implementing regulations
 11 arising from the failure to provide Proposition 65 warnings on the Covered Products regarding
 12 lead up to and including the Compliance Date.

13 **8.5** ERC on its own behalf only, and Kerry Group on its own behalf only,
 14 further waive and release any and all claims they may have against each other for all actions or
 15 statements made or undertaken in the course of seeking or opposing enforcement of
 16 Proposition 65 in connection with the Notices and Complaint up through and including the
 17 Compliance Date, provided, however, that nothing in Section 8 shall affect or limit any Party's
 18 right to seek to enforce the terms of this Consent Judgment.

19 **8.6** It is possible that other claims not known to the Parties, arising out of the
 20 facts alleged in the Notices and Complaint, and relating to the Covered Products, will develop
 21 or be discovered. ERC on behalf of itself only, and Kerry Group on behalf of itself only,
 22 acknowledge that this Consent Judgment is expressly intended to cover and include all such
 23 claims up through and including the Compliance Date, including all rights of action therefore.
 24 ERC and Kerry Group acknowledge that the claims released in Sections 8.1 and 8.2 above may
 25 include unknown claims, and nevertheless waive California Civil Code section 1542 as to any
 26 such unknown claims. California Civil Code section 1542 reads as follows:

27 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
 28 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**
EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE
AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY

1 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED
2 PARTY.

3 ERC on behalf of itself only, and Kerry Group on behalf of itself only, acknowledge and
4 understand the significance and consequences of this specific waiver of California Civil Code
5 section 1542.

6 **8.7** Compliance with the terms of this Consent Judgment shall be deemed to
7 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
8 in the Covered Products as set forth in the Notices and Complaint.

9 **8.8** Nothing in this Consent Judgment is intended to apply to any occupational
10 or environmental exposures arising under Proposition 65, nor shall it apply to any of Kerry
11 Group's products other than the Covered Products.

12 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

13 In the event that any of the provisions of this Consent Judgment are held by a court to be
14 unenforceable, the validity of the remaining enforceable provisions shall not be adversely
15 affected.

16 **10. GOVERNING LAW**

17 The terms and conditions of this Consent Judgment shall be governed by and construed in
18 accordance with the laws of the State of California.

19 **11. PROVISION OF NOTICE**

20 All notices required to be given to either Party to this Consent Judgment by the other shall
21 be in writing and sent to the following agents listed below via first-class mail or via electronic
22 mail where required. Courtesy copies via email may also be sent.

23 **FOR ENVIRONMENTAL RESEARCH CENTER, INC.:**

24 Chris Heptinstall, Executive Director, Environmental Research Center
25 3111 Camino Del Rio North, Suite 400
26 San Diego, CA 92108
27 Ph: (619) 500-3090
28 Email: chris.heptinstall@erc501c3.org

28 ///

1 With a copy to:
 2 Charles W. Poss
 3 Environmental Research Center, Inc.
 4 3111 Camino Del Rio North, Suite 400
 5 San Diego, CA 92108
 6 Ph: (619) 500-3090
 7 Email: charles.poss@erc501c3.org

8 **FOR KERRY GROUP PLC; KERRY INC.;**
 9 **KERRY FOODS INC.; KERRY LUXEMBOURG S.A.R.L.:**

10 Lanny Schimmel
 11 General Counsel
 12 Kerry Inc.
 13 ATTN: LEGAL DEPT.
 14 Kerry Center
 15 3400 Millington Road
 16 Beloit, WI 53511
 17 Email: Lanny.Schimmel@kerry.com

18 With a copy to:
 19 Merrit M. Jones
 20 Bryan Cave Leighton Paisner LLP
 21 3 Embarcadero Ctr, Fl 7
 22 San Francisco, CA 94111
 23 Ph: (415) 675-3400
 24 Email: merrit.jones@bclplaw.com

25 **12. COURT APPROVAL**

26 **12.4** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
 27 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
 28 Consent Judgment.

12.5 If the California Attorney General objects to any term in this Consent
 Judgment, the Parties shall use their best efforts to resolve the concern in a timely manner, and
 if possible prior to the hearing on the motion.

12.6 If this Stipulated Consent Judgment is not approved by the Court, it shall be
 void and have no force or effect.

///

1 **13. EXECUTION AND COUNTERPARTS**

2 This Consent Judgment may be executed in counterparts, which taken together shall be
3 deemed to constitute one document. A facsimile or .pdf signature shall be construed to be as valid
4 as the original signature.

5 **14. DRAFTING**

6 The terms of this Consent Judgment have been reviewed by the respective counsel for
7 each Party prior to its signing, and each Party has had an opportunity to fully discuss the terms
8 and conditions with legal counsel. The Parties agree that, in any subsequent interpretation and
9 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,
10 and no provision of this Consent Judgment shall be construed against any Party, based on the fact
11 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any
12 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated
13 equally in the preparation and drafting of this Consent Judgment.

14 **15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

15 If a dispute arises with respect to either Party's compliance with the terms of this Consent
16 Judgment entered by the Court, the Parties shall meet and confer in person, by telephone, and/or
17 in writing and endeavor to resolve the dispute in an amicable manner. No action or motion may
18 be filed in the absence of such a good faith attempt to resolve the dispute beforehand.

19 **16. ENFORCEMENT**

20 ERC may, by motion or order to show cause before the Superior Court of Alameda
21 County, enforce the terms and conditions contained in this Consent Judgment. In any action
22 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
23 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.
24 To the extent the failure to comply with the Consent Judgment constitutes a violation of
25 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent
26 Judgment, but may seek in another action whatever fines, costs, penalties, or remedies as are
27 provided by law for failure to comply with Proposition 65 or other laws.

28 ///

1 **17. ENTIRE AGREEMENT, AUTHORIZATION**

2 **17.4** This Consent Judgment contains the sole and entire agreement and
3 understanding of the Parties with respect to the entire subject matter herein, including any and
4 all prior discussions, negotiations, commitments, and understandings related thereto. No
5 representations, oral or otherwise, express or implied, other than those contained herein have
6 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
7 herein, shall be deemed to exist or to bind any Party.

8 **17.5** Each signatory to this Consent Judgment certifies that he or she is fully
9 authorized by the Party he or she represents to stipulate to this Consent Judgment.

10 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
11 **CONSENT JUDGMENT**

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

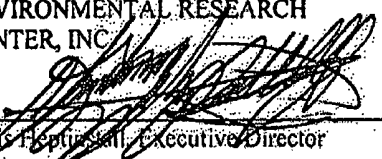
15 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
16 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
17 been diligently prosecuted, and that the public interest is served by such settlement; and

18 (2) Make the findings pursuant to California Health and Safety Code section
19 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

20 **IT IS SO STIPULATED:**

21 Dated: 1/20/21, 2021

ENVIRONMENTAL RESEARCH
CENTER, INC

22
23 By: 
24 Chris Heptinstall, Executive Director


25 Dated: February 8, 2021

KERRY GROUP PLC

26
27 
28 By: Gerry Benan
Its: Director

1 Dated: January 28, 2021

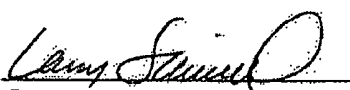
KERRY INC.



By: Lanny Schimmel
Its: Vice President, Secretary & General Counsel

5 Dated: January 28, 2021

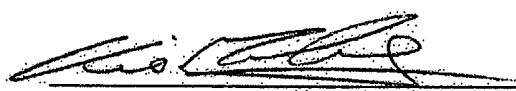
KERRY FOODS INC.



By: Lanny Schimmel
Its: Vice President, Secretary & General Counsel

10 Dated: February 8, 2021

KERRY LUXEMBOURG S.A.R.L.

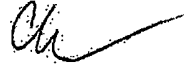


By: Ken O'Mahony
Its: President

16 APPROVED AS TO FORM:

18 Dated: January 22, 2021

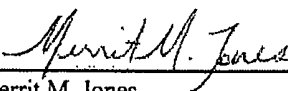
ENVIRONMENTAL RESEARCH
CENTER, INC.

By: 

Charles W. Poss
In-House Counsel

23 Dated: February 9, 2021

BRYAN CAVE LEIGHTON PAISNER
LLP

By: 

Merrit M. Jones
Attorney for Kerry Group PLC, Kerry
Inc., Kerry Foods Inc., and Kerry
Luxembourg S.A.R.L.

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ORDER AND JUDGMENT

Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is approved and Judgment is hereby entered according to its terms.

IT IS SO ORDERED, ADJUDGED AND DECREED

Dated: MAY 06 2021



Judge of the Superior Court
RICHARD L. SEABOLT

EXHIBIT A



Environmental Research Center

3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
619-500-3090

May 28, 2020

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I am the Executive Director of Environmental Research Center, Inc. ("ERC"). ERC 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, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC 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 §25249.5 *et seq.*, with respect to the products 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. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 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.

General Information about Proposition 65. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is attached with the copy of this letter served to the alleged Violators identified below.

Alleged Violators. The names of the companies covered by this notice that violated Proposition 65 (hereinafter the "Violators") are:

Kerry Group PLC
Kerry Inc.
Kerry Foods Inc.
Kerry Luxembourg S.A.R.L.

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:

1. **Big Train Blended Crème Belgian Chocolate - Lead**
2. **Fit Frappé Coffee Protein Drink Mix Mocha - Lead**
3. **Fit Frappé Chai Protein Drink Mix Spiced Chai Latte - Lead**

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
May 28, 2020
Page 2

4. **Fit Frappé Chocolate Protein Drink Mix Chocolate - Lead**
5. **Fit Frappé Coffee Protein Drink Mix Vanilla Latte - Lead**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.


Route of Exposure. The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least May 28, 2017, 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 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 violated Proposition 65 because they failed to provide persons ingesting 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, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time-consuming litigation.

Please direct all questions concerning this notice to ERC at the above listed address and telephone number.

Sincerely,



Chris Heptinstall
Executive Director
Environmental Research Center

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Kerry Group PLC; Kerry Inc.; Kerry Foods Inc.; and Kerry Luxembourg S.A.R.L. and their Registered Agents for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
May 28, 2020
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CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Kerry Group PLC; Kerry Inc.; Kerry Foods Inc.; and Kerry Luxembourg S.A.R.L.

I, Chris Heptinstall, declare:

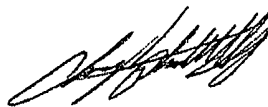
1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am the Executive Director 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 §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: May 28, 2020

Chris Heptinstall

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
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CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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 and over the age of 18 years of age. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On May 28, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Kerry Group PLC
Prince's Street
Tralee
Co. Kerry
V92 EH11
Ireland

The Corporation Trust Company
(Registered Agent for Kerry Foods Inc.)
Corporation Trust Center
1209 N. Orange St
Wilmington, DE 19801

Current President or CEO
Kerry Inc.
3400 Millington Rd
Beloit, WI 53511

The Corporation Trust Company
(Registered Agent for Kerry Inc.)
Corporation Trust Center
1209 N. Orange St
Wilmington, DE 19801

Current President or CEO
Kerry Foods Inc.
3400 Millington Rd
Beloit, WI 53511

CT Corporation System
(Registered Agent for Kerry Foods Inc.)
301 S Bedford St, Ste 1
Madison, WI 53703

Current President or CEO
Kerry Luxembourg S.A.R.L.
17 Rue Antoine Jans
L-1820 Luxembourg
LUXEMBOURG

CT Corporation System
(Registered Agent for Kerry Inc.)
301 S Bedford St, Ste 1
Madison, WI 53703

CT Corporation System
(Registered Agent for Kerry Inc.)
818 W 7th St, Ste 930
Los Angeles, CA 90017

CT Corporation System
(Registered Agent for Kerry Luxembourg S.A.R.L.)
301 S Bedford St, Ste 1
Madison, WI 53703

On May 28, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §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
Post Office Box 70550
Oakland, CA 94612-0550

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

May 28, 2020

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On May 28, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §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 each of the parties listed below:

Nancy O'Malley, District Attorney
Alameda County
7677 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

Anne Marie Schubert, District Attorney
Sacramento County
901 G Street
Sacramento, CA 95814
Prop65@sacda.org

Barbara Yook, District Attorney
Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249
Prop65Env@co.calaveras.ca.us

Summer Stephan, District Attorney
San Diego County
330 West Broadway
San Diego, CA 92101
SanDiegoDAProp65@sdca.org

Stacey Grassini, Deputy District Attorney
Contra Costa County
900 Ward Street
Martinez, CA 94553
sgrassini@contracostada.org

Mark Ankorn, Deputy City Attorney
San Diego City Attorney
1200 Third Avenue
San Diego, CA 92101
CityAttyProp65@sandiego.gov

Thomas L. Hardy, District Attorney
Inyo County
168 North Edwards Street
Independence, CA 93526
inyoda@inyocounty.us

Gregory Alker, Assistant District Attorney
San Francisco County
732 Brannan Street
San Francisco, CA 94103
gregory.alker@sfgov.org

Michelle Latimer, Program Coordinator
Lassen County
220 S. Lassen Street
Susanville, CA 96130
mlatimer@co.lassen.ca.us

Valerie Lopez, Deputy City Attorney
San Francisco City Attorney
1390 Market Street, 7th Floor
San Francisco, CA 94102
Valerie.Lopez@sfcityatty.org

Jeannine M. Pacioni, District Attorney
Monterey County
1200 Aguajito Road
Monterey, CA 93940
Prop65DA@co.monterey.ca.us

Tori Verber Salazar, District Attorney
San Joaquin County
222 E. Weber Avenue, Room 202
Stockton, CA 95202
DAConsumer.Environmental@sjcda.org

Gary Lieberstein, District Attorney
Napa County
931 Parkway Mall
Napa, CA 94559
CEPD@countyofnapa.org

Eric J. Dobroth, Deputy District Attorney
San Luis Obispo County
County Government Center Annex, 4th Floor
San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

Paul E. Zellerbach, District Attorney
Riverside County
3072 Orange Street
Riverside, CA 92501
Prop65@rivcoda.org

Christopher Dalbey, Deputy District Attorney
Santa Barbara County
1112 Santa Barbara Street
Santa Barbara, CA 93101
DAProp65@co.santa-barbara.ca.us

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

May 28, 2020

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Bud Porter, Supervising Deputy District Attorney
Santa Clara County
70 W Hedding St
San Jose, CA 95110
EPU@da.sccgov.org

Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

Jeffrey S. Rosell, District Attorney
Santa Cruz County
701 Ocean Street
Santa Cruz, CA 95060
Prop65DA@santacruzcounty.us

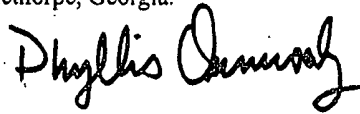
Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

Stephan R. Passalacqua, District Attorney
Sonoma County
600 Administration Dr
Sonoma, CA 95403
jbarnes@sonoma-county.org

Jeff W. Reising, District Attorney
Yolo County
301 Second Street
Woodland, CA 95695
cfepd@yolocounty.org

On May 28, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, 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 with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on May 28, 2020, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

May 28, 2020

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Service List

District Attorney, Alpine
County
P.O. Box 248
Markleeville, CA 96120

District Attorney, Amador
County
708 Court Street, Suite 202
Jackson, CA 95642

District Attorney, Butte
County
25 County Center Drive, Suite
245
Oroville, CA 95965

District Attorney, Colusa
County
346 Fifth Street Suite 101
Colusa, CA 95932

District Attorney, Del Norte
County
450 H Street, Room 171
Crescent City, CA 95531

District Attorney, El Dorado
County
778 Pacific St.
Placerville, CA 95667

District Attorney, Fresno
County
2220 Tulare Street, Suite 1000
Fresno, CA 93721

District Attorney, Glenn
County
Post Office Box 430
Willows, CA 95988

District Attorney, Humboldt
County
825 5th Street 4th Floor
Eureka, CA 95501

District Attorney, Imperial
County
940 West Main Street, Ste 102
El Centro, CA 92243

District Attorney, Kern County
1215 Truxtun Avenue
Bakersfield, CA 93301

District Attorney, Kings
County
1400 West Lacey Boulevard
Hanford, CA 93230

District Attorney, Lake County
255 N. Forbes Street
Lakeport, CA 95453

District Attorney, Los Angeles
County
Hall of Justice
211 West Temple St., Ste 1200
Los Angeles, CA 90012

District Attorney, Madera
County
209 West Yosemite Avenue
Madera, CA 93637

District Attorney, Marin
County
3501 Civic Center Drive,
Room 130
San Rafael, CA 94903

District Attorney, Mariposa
County
Post Office Box 730
Mariposa, CA 95338

District Attorney, Mendocino
County
Post Office Box 1000
Ukiah, CA 95482

District Attorney, Merced
County
550 W. Main Street
Merced, CA 95340

District Attorney, Modoc
County
204 S Court Street, Room 202
Alturas, CA 96101-4020

District Attorney, Mono
County
Post Office Box 617
Bridgeport, CA 93517

District Attorney, Nevada
County
201 Commercial Street
Nevada City, CA 95959

District Attorney, Orange
County
401 West Civic Center Drive
Santa Ana, CA 92701

District Attorney, Placer
County
10810 Justice Center Drive,
Ste 240
Roseville, CA 95678

District Attorney, Plumas
County
520 Main Street, Room 404
Quincy, CA 95971

District Attorney, San Benito
County
419 Fourth Street, 2nd Floor
Hollister, CA 95023

District Attorney, San
Bernardino County
303 West Third Street
San Bernardino, CA 92415

District Attorney, San Mateo
County
400 County Ctr., 3rd Floor
Redwood City, CA 94063

District Attorney, Shasta
County
1355 West Street
Redding, CA 96001

District Attorney, Sierra
County
100 Courthouse Square, 2nd
Floor
Downieville, CA 95936

District Attorney, Siskiyou
County
Post Office Box 986
Yreka, CA 96097

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

District Attorney, Stanislaus
County
832 12th Street, Ste 300
Modesto, CA 95354

District Attorney, Sutter
County
463 2nd Street
Yuba City, CA 95991

District Attorney, Tehama
County
Post Office Box 519
Red Bluff, CA 96080

District Attorney, Trinity
County
Post Office Box 310
Weaverville, CA 96093

District Attorney, Tuolumne
County
423 N. Washington Street
Sonora, CA 95370

District Attorney, Yuba
County
215 Fifth Street, Suite 152
Marysville, CA 95901

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

San Jose City Attorney's
Office
200 East Santa Clara Street,
16th Floor
San Jose, CA 95113

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCYTHE 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

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>.

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.

² See Section 25501(a)(4).

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

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.

EXHIBIT B



Environmental Research Center

3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
619-500-3090

July 10, 2020

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I am the Executive Director of Environmental Research Center, Inc. ("ERC"). ERC 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, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC 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 §25249.5 *et seq.*, with respect to the products 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. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 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.

General Information about Proposition 65. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is attached with the copy of this letter served to the alleged Violators identified below.

Alleged Violators. The names of the companies covered by this notice that violated Proposition 65 (hereinafter the "Violators") are:

Kerry Group PLC
Kerry Inc.
Kerry Foods Inc.
Kerry Luxembourg S.A.R.L.

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
July 10, 2020
Page 2

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:

1. **Fit Frappé Vanilla Protein Drink Mix Vanilla - Lead**
2. **Fit Frappé Coffee Protein Drink Mix Espresso - Lead**
3. **Big Train Carb Conscious Lifestyle Spiced Chai - Lead**
4. **Big Train Blended Ice Coffee Chocolate Malt - Lead**
5. **Big Train Blended Ice Coffee Vanilla No Sugar Added - Lead**
6. **Big Train Reduced Sugar Chai Tea Latte Vanilla Chai - Lead**
7. **Big Train Blended Ice Coffee Decaf Mocha - Lead**
8. **Big Train Blended Ice Coffee Toffee Mocha - Lead**
9. **Big Train Blended Ice Coffee Kona Mocha - Lead**
10. **Big Train Blended Ice Coffee Java Chip - Lead**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

Route of Exposure. The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least July 10, 2017, 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 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 violated Proposition 65 because they failed to provide persons ingesting 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, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time-consuming litigation.

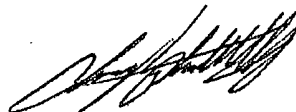
Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

July 10, 2020

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Please direct all questions concerning this notice to ERC at the above listed address and telephone number.

Sincerely,



Chris Heptinstall
Executive Director
Environmental Research Center

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Kerry Group PLC; Kerry Inc.; Kerry Foods Inc.; and Kerry Luxembourg S.A.R.L. and their Registered Agents for Service of Process only)

Additional Supporting Information for Certificate of Merit (to AG only)

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
July 10, 2020
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CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Kerry Group PLC; Kerry Inc.; Kerry Foods Inc.; and Kerry Luxembourg S.A.R.L.

I, Chris Heptinstall, declare:

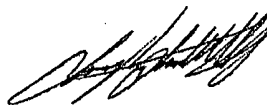
1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am the Executive Director 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 §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: July 10, 2020

Chris Heptinstall

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
 July 10, 2020
 Page 5

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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 and over the age of 18 years of age. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On July 10, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
 Kerry Group PLC
 Prince's Street
 Tralee
 Co. Kerry
 V92 EH11
 Ireland

The Corporation Trust Company
 (Registered Agent for Kerry Foods Inc.)
 Corporation Trust Center
 1209 N. Orange St
 Wilmington, DE 19801

Current President or CEO
 Kerry Inc.
 3400 Millington Rd
 Beloit, WI 53511

The Corporation Trust Company
 (Registered Agent for Kerry Inc.)
 Corporation Trust Center
 1209 N. Orange St
 Wilmington, DE 19801

Current President or CEO
 Kerry Foods Inc.
 3400 Millington Rd
 Beloit, WI 53511

CT Corporation System
 (Registered Agent for Kerry Foods Inc.)
 301 S Bedford St, Ste 1
 Madison, WI 53703

Current President or CEO
 Kerry Luxembourg S.A.R.L.
 17 Rue Antoine Jans
 L-1820 Luxembourg
 LUXEMBOURG

CT Corporation System
 (Registered Agent for Kerry Inc.)
 301 S Bedford St, Ste 1
 Madison, WI 53703

CT Corporation System
 (Registered Agent for Kerry Inc.)
 818 W 7th St, Ste 930
 Los Angeles, CA 90017

CT Corporation System
 (Registered Agent for Kerry Luxembourg S.A.R.L.)
 301 S Bedford St, Ste 1
 Madison, WI 53703

On July 10, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §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
 Post Office Box 70550
 Oakland, CA 94612-0550

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
July 10, 2020
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On July 10, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §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 each of the parties listed below:

Nancy O'Malley, District Attorney
Alameda County
7677 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

Anne Marie Schubert, District Attorney
Sacramento County
901 G Street
Sacramento, CA 95814
Prop65@sacda.org

Barbara Yook, District Attorney
Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249
Prop65Env@co.calaveras.ca.us

Summer Stephan, District Attorney
San Diego County
330 West Broadway
San Diego, CA 92101
SanDiegoDAProp65@sdcda.org

Stacey Grassini, Deputy District Attorney
Contra Costa County
900 Ward Street
Martinez, CA 94553
sgrassini@contracostada.org

Mark Ankcorn, Deputy City Attorney
San Diego City Attorney
1200 Third Avenue
San Diego, CA 92101
CityAttyProp65@sandiego.gov

Thomas L. Hardy, District Attorney
Inyo County
168 North Edwards Street
Independence, CA 93526
inyoda@inyocounty.us

Gregory Alker, Assistant District Attorney
San Francisco County
732 Brannan Street
San Francisco, CA 94103
gregory.alker@sfgov.org

Michelle Latimer, Program Coordinator
Lassen County
220 S. Lassen Street
Susanville, CA 96130
mlatimer@co.lassen.ca.us

Valerie Lopez, Deputy City Attorney
San Francisco City Attorney
1390 Market Street, 7th Floor
San Francisco, CA 94102
Valerie.Lopez@sfcityatty.org

Jeannine M. Pacioni, District Attorney
Monterey County
1200 Aguajito Road
Monterey, CA 93940
Prop65DA@co.monterey.ca.us

Tori Verber Salazar, District Attorney
San Joaquin County
222 E. Weber Avenue, Room 202
Stockton, CA 95202
DAConsumer.Environmental@sjcda.org

Gary Lieberstein, District Attorney
Napa County
931 Parkway Mall
Napa, CA 94559
CEPD@countyofnapa.org

Eric J. Dobroth, Deputy District Attorney
San Luis Obispo County
County Government Center Annex, 4th Floor
San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

Paul E. Zellerbach, District Attorney
Riverside County
3072 Orange Street
Riverside, CA 92501
Prop65@rivcoda.org

Christopher Dalbey, Deputy District Attorney
Santa Barbara County
1112 Santa Barbara Street
Santa Barbara, CA 93101
DAProp65@co.santa-barbara.ca.us

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

July 10, 2020

Page 7

Bud Porter, Supervising Deputy District Attorney
Santa Clara County
70 W Hedding St
San Jose, CA 95110
EPU@da.sccgov.org

Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

Jeffrey S. Rosell, District Attorney
Santa Cruz County
701 Ocean Street
Santa Cruz, CA 95060
Prop65DA@santacruzcounty.us

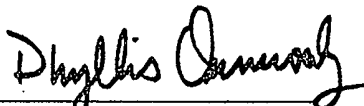
Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

Stephan R. Passalacqua, District Attorney
Sonoma County
600 Administration Dr
Sonoma, CA 95403
jbarnes@sonoma-county.org

Jeff W. Reisig, District Attorney
Yolo County
301 Second Street
Woodland, CA 95695
cfepd@yolocounty.org

On July 10, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, 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 with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on July 10, 2020, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
 July 10, 2020
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Service List

District Attorney, Alpine
 County
 P.O. Box 248
 Markleeville, CA 96120

District Attorney, Amador
 County
 708 Court Street, Suite 202
 Jackson, CA 95642

District Attorney, Butte
 County
 25 County Center Drive, Suite
 245
 Oroville, CA 95965

District Attorney, Colusa
 County
 346 Fifth Street Suite 101
 Colusa, CA 95932

District Attorney, Del Norte
 County
 450 H Street, Room 171
 Crescent City, CA 95531

District Attorney, El Dorado
 County
 778 Pacific St.
 Placerville, CA 95667

District Attorney, Fresno
 County
 2220 Tulare Street, Suite 1000
 Fresno, CA 93721

District Attorney, Glenn
 County
 Post Office Box 430
 Willows, CA 95988

District Attorney, Humboldt
 County
 825 5th Street 4th Floor
 Eureka, CA 95501

District Attorney, Imperial
 County
 940 West Main Street, Ste 102
 El Centro, CA 92243

District Attorney, Kern County
 1215 Truxtun Avenue
 Bakersfield, CA 93301

District Attorney, Kings
 County
 1400 West Lacey Boulevard
 Hanford, CA 93230

District Attorney, Lake County
 255 N. Forbes Street
 Lakeport, CA 95453

District Attorney, Los Angeles
 County
 Hall of Justice
 211 West Temple St., Ste 1200
 Los Angeles, CA 90012

District Attorney, Madera
 County
 209 West Yosemite Avenue
 Madera, CA 93637

District Attorney, Marin
 County
 3501 Civic Center Drive,
 Room 130
 San Rafael, CA 94903

District Attorney, Mariposa
 County
 Post Office Box 730
 Mariposa, CA 95338

District Attorney, Mendocino
 County
 Post Office Box 1000
 Ukiah, CA 95482

District Attorney, Merced
 County
 550 W. Main Street
 Merced, CA 95340

District Attorney, Modoc
 County
 204 S Court Street, Room 202
 Alturas, CA 96101-4020

District Attorney, Mono
 County
 Post Office Box 617
 Bridgeport, CA 93517

District Attorney, Nevada
 County
 201 Commercial Street
 Nevada City, CA 95959

District Attorney, Orange
 County
 401 West Civic Center Drive
 Santa Ana, CA 92701

District Attorney, Placer
 County
 10810 Justice Center Drive,
 Ste 240
 Roseville, CA 95678

District Attorney, Plumas
 County
 520 Main Street, Room 404
 Quincy, CA 95971

District Attorney, San Benito
 County
 419 Fourth Street, 2nd Floor
 Hollister, CA 95023

District Attorney, San
 Bernardino County
 303 West Third Street
 San Bernardino, CA 92415

District Attorney, San Mateo
 County
 400 County Ctr., 3rd Floor
 Redwood City, CA 94063

District Attorney, Shasta
 County
 1355 West Street
 Redding, CA 96001

District Attorney, Sierra
 County
 100 Courthouse Square, 2nd
 Floor
 Downieville, CA 95936

District Attorney, Siskiyou
 County
 Post Office Box 986
 Yreka, CA 96097

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

District Attorney, Stanislaus
 County
 832 12th Street, Ste 300
 Modesto, CA 95354

District Attorney, Sutter
 County
 463 2nd Street
 Yuba City, CA 95991

District Attorney, Tehama
 County
 Post Office Box 519
 Red Bluff, CA 96080

District Attorney, Trinity
 County
 Post Office Box 310
 Weaverville, CA 96093

District Attorney, Tuolumne
 County
 423 N. Washington Street
 Sonora, CA 95370

District Attorney, Yuba
 County
 215 Fifth Street, Suite 152
 Marysville, CA 95901

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

San Jose City Attorney's
 Office
 200 East Santa Clara Street,
 16th Floor
 San Jose, CA 95113

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCYTHE 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

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>.

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.

² See Section 25501(a)(4).

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>.

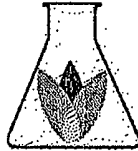
FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

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.

EXHIBIT C



Environmental Research Center

3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
619-500-3090

August 5, 2020

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I am the Executive Director of Environmental Research Center, Inc. (“ERC”). ERC 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, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC 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 §25249.5 *et seq.*, with respect to the products 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. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 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.

General Information about Proposition 65. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is attached with the copy of this letter served to the alleged Violators identified below.

Alleged Violators. The names of the companies covered by this notice that violated Proposition 65 (hereinafter the “Violators”) are:

Kerry Group PLC
Kerry Inc.
Kerry Foods Inc.
Kerry Luxembourg S.A.R.L.

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
August 5, 2020
Page 2

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:

1. **Big Train Mexican Spiced Cocoa - Lead**
2. **Big Train 20° Below Blended Crème Frozen Hot Chocolate - Lead**
3. **Big Train Blended Ice Coffee Peppermint Mocha - Lead**
4. **Big Train Blended Ice Coffee Pumpkin Spice - Lead**
5. **Big Train Blended Ice Coffee Dulce de Leche - Lead**
6. **Big Train Blended Ice Coffee Espresso - Lead**
7. **Big Train Blended Ice Coffee Decaf Vanilla - Lead**
8. **Big Train Blended Ice Coffee Chocolate Mint - Lead**
9. **Big Train Chai Tea Latte Raspberry Chai - Lead**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

Route of Exposure. The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

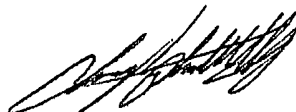
Approximate Time Period of Violations. Ongoing violations have occurred every day since at least August 5, 2017, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced 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 violated Proposition 65 because they failed to provide persons ingesting 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, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time-consuming litigation.

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
August 5, 2020
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Please direct all questions concerning this notice to ERC at the above listed address and telephone number.

Sincerely,



Chris Heptinstall
Executive Director
Environmental Research Center

Attachments

Certificate of Merit
Certificate of Service
OEHHA Summary (to Kerry Group PLC; Kerry Inc.; Kerry Foods Inc.; and Kerry Luxembourg S.A.R.L. and their Registered Agents for Service of Process only)
Additional Supporting Information for Certificate of Merit (to AG only)

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
August 5, 2020
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CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by Kerry Group PLC; Kerry Inc.; Kerry Foods Inc.; and Kerry Luxembourg S.A.R.L.

I, Chris Heptinstall, declare:

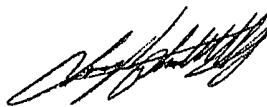
1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am the Executive Director 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 §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 5, 2020

Chris Heptinstall

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
August 5, 2020
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CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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 and over the age of 18 years of age. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On August 5, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** were served on the following parties when a true and correct copy thereof was sent via electronic mail to the parties listed below, through their attorney pursuant to agreement:

Kerry Group PLC; Kerry Inc.;
Kerry Foods Inc.; Kerry Luxembourg S.A.R.L.
c/o Merrit Jones
Bryan Cave Leighton Paisner LLP
3 Embarcadero Center Fl 7
San Francisco, CA 94111
Email: merrit.jones@bclplaw.com

On August 5, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §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
Post Office Box 70550
Oakland, CA 94612-0550

On August 5, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §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 each of the parties listed below:

Nancy O'Malley, District Attorney
Alameda County
7677 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

Stacey Grassini, Deputy District Attorney
Contra Costa County
900 Ward Street
Martinez, CA 94553
sgrassini@contracostada.org

Barbara Yook, District Attorney
Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249
Prop65Env@co.calaveras.ca.us

Thomas L. Hardy, District Attorney
Inyo County
168 North Edwards Street
Independence, CA 93526
inyoda@inyocounty.us

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

August 5, 2020

Page 6

Michelle Latimer, Program Coordinator
Lassen County
220 S. Lassen Street
Susanville, CA 96130
mlatimer@co.lassen.ca.us

Jeannine M. Pacioni, District Attorney
Monterey County
1200 Aguajito Road
Monterey, CA 93940
Prop65DA@co.monterey.ca.us

Gary Lieberstein, District Attorney
Napa County
931 Parkway Mall
Napa, CA 94559
CEPD@countyofnapa.org

Paul E. Zellerbach, District Attorney
Riverside County
3072 Orange Street
Riverside, CA 92501
Prop65@rivcoda.org

Anne Marie Schubert, District Attorney
Sacramento County
901 G Street
Sacramento, CA 95814
Prop65@sacda.org

Summer Stephan, District Attorney
San Diego County
330 West Broadway
San Diego, CA 92101
SanDiegoDAProp65@sdca.org

Mark Ankorn, Deputy City Attorney
San Diego City Attorney
1200 Third Avenue
San Diego, CA 92101
CityAttyProp65@sandiego.gov

Gregory Alker, Assistant District Attorney
San Francisco County
732 Brannan Street
San Francisco, CA 94103
gregory.alker@sfgov.org

Valerie Lopez, Deputy City Attorney
San Francisco City Attorney
1390 Market Street, 7th Floor
San Francisco, CA 94102
Valerie.Lopez@sfcityatty.org

Tori Verber Salazar, District Attorney
San Joaquin County
222 E. Weber Avenue, Room 202
Stockton, CA 95202
DAConsumer.Environmental@sjcda.org

Eric J. Dobroth, Deputy District Attorney
San Luis Obispo County
County Government Center Annex, 4th Floor
San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

Christopher Dalbey, Deputy District Attorney
Santa Barbara County
1112 Santa Barbara Street
Santa Barbara, CA 93101
DAProp65@co.santa-barbara.ca.us

Bud Porter, Supervising Deputy District Attorney
Santa Clara County
70 W Hedding St
San Jose, CA 95110
EPU@da.sccgov.org

Jeffrey S. Rosell, District Attorney
Santa Cruz County
701 Ocean Street
Santa Cruz, CA 95060
Prop65DA@santacruzcounty.us

Stephan R. Passalacqua, District Attorney
Sonoma County
600 Administration Dr
Sonoma, CA 95403
jbarnes@sonoma-county.org

Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

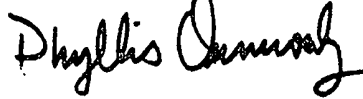
Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

Jeff W. Reising, District Attorney
Yolo County
301 Second Street
Woodland, CA 95695
cfepd@yolocounty.org

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
August 5, 2020
Page 7

On August 5, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, 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 with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on August 5, 2020, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
 August 5, 2020
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Service List

District Attorney, Alpine
 County
 P.O. Box 248
 Markleeville, CA 96120

District Attorney, Amador
 County
 708 Court Street, Suite 202
 Jackson, CA 95642

District Attorney, Butte
 County
 25 County Center Drive, Suite
 245
 Oroville, CA 95965

District Attorney, Colusa
 County
 346 Fifth Street Suite 101
 Colusa, CA 95932

District Attorney, Del Norte
 County
 450 H Street, Room 171
 Crescent City, CA 95531

District Attorney, El Dorado
 County
 778 Pacific St.
 Placerville, CA 95667

District Attorney, Fresno
 County
 2220 Tulare Street, Suite 1000
 Fresno, CA 93721

District Attorney, Glenn
 County
 Post Office Box 430
 Willows, CA 95988

District Attorney, Humboldt
 County
 825 5th Street 4th Floor
 Eureka, CA 95501

District Attorney, Imperial
 County
 940 West Main Street, Ste 102
 El Centro, CA 92243

District Attorney, Kern County
 1215 Truxtun Avenue
 Bakersfield, CA 93301

District Attorney, Kings
 County
 1400 West Lacey Boulevard
 Hanford, CA 93230

District Attorney, Lake County
 255 N. Forbes Street
 Lakeport, CA 95453

District Attorney, Los Angeles
 County
 Hall of Justice
 211 West Temple St., Ste 1200
 Los Angeles, CA 90012

District Attorney, Madera
 County
 209 West Yosemite Avenue
 Madera, CA 93637

District Attorney, Marin
 County
 3501 Civic Center Drive,
 Room 130
 San Rafael, CA 94903

District Attorney, Mariposa
 County
 Post Office Box 730
 Mariposa, CA 95338

District Attorney, Mendocino
 County
 Post Office Box 1000
 Ukiah, CA 95482

District Attorney, Merced
 County
 550 W. Main Street
 Merced, CA 95340

District Attorney, Modoc
 County
 204 S Court Street, Room 202
 Alturas, CA 96101-4020

District Attorney, Mono
 County
 Post Office Box 617
 Bridgeport, CA 93517

District Attorney, Nevada
 County
 201 Commercial Street
 Nevada City, CA 95959

District Attorney, Orange
 County
 401 West Civic Center Drive
 Santa Ana, CA 92701

District Attorney, Placer
 County
 10810 Justice Center Drive,
 Ste 240
 Roseville, CA 95678

District Attorney, Plumas
 County
 520 Main Street, Room 404
 Quincy, CA 95971

District Attorney, San Benito
 County
 419 Fourth Street, 2nd Floor
 Hollister, CA 95023

District Attorney, San
 Bernardino County
 303 West Third Street
 San Bernardino, CA 92415

District Attorney, San Mateo
 County
 400 County Cir., 3rd Floor
 Redwood City, CA 94063

District Attorney, Shasta
 County
 1355 West Street
 Redding, CA 96001

District Attorney, Sierra
 County
 100 Courthouse Square, 2nd
 Floor
 Downieville, CA 95936

District Attorney, Siskiyou
 County
 Post Office Box 986
 Yreka, CA 96097

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

District Attorney, Stanislaus
 County
 832 12th Street, Ste 300
 Modesto, CA 95354

District Attorney, Sutter
 County
 463 2nd Street
 Yuba City, CA 95991

District Attorney, Tehama
 County
 Post Office Box 519
 Red Bluff, CA 96080

District Attorney, Trinity
 County
 Post Office Box 310
 Weaverville, CA 96093

District Attorney, Tuolumne
 County
 423 N. Washington Street
 Sonora, CA 95370

District Attorney, Yuba
 County
 215 Fifth Street, Suite 152
 Marysville, CA 95901

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

San Jose City Attorney's
 Office
 200 East Santa Clara Street,
 16th Floor
 San Jose, CA 95113

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCYTHE 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

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>.

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.

² See Section 25501(a)(4).

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

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.

EXHIBIT D



Environmental Research Center

3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
619-500-3090

September 3, 2020

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I am the Executive Director of Environmental Research Center, Inc. ("ERC"). ERC 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, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC 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 §25249.5 *et seq.*, with respect to the products 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. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 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.

General Information about Proposition 65. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is attached with the copy of this letter served to the alleged Violators identified below.

Alleged Violators. The names of the companies covered by this notice that violated Proposition 65 (hereinafter the "Violators") are:

Kerry Group PLC
Kerry Inc.
Kerry Foods Inc.
Kerry Luxembourg S.A.R.L.

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
September 3, 2020
Page 2

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:

1. **Big Train Chai Tea Latte Spiced Apple Chai - Lead**
2. **Big Train Chai Tea Latte Decaf Spiced Chai - Lead**
3. **Big Train Chai Tea Latte Spiced Chai - Lead**
4. **Big Train Chai Tea Pumpkin Pie - Lead**
5. **Big Train Blended Crème Cookies N Cream - Lead**
6. **Big Train Blended Crème Hazelnut - Lead**
7. **Big Train Blended Crème Strawberry Banana - Lead**
8. **Big Train Blended Crème Cake Batter - Lead**
9. **Big Train Blended Crème Vanilla Smoothie Base Mix No Sugar Added - Lead**
10. **Big Train Blended Ice Coffee Chocolate Peanut Butter - Lead**
11. **Big Train Kidz Kreamz Blended Crème Cotton Candy - Lead**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

Route of Exposure. The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

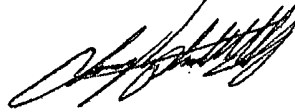
Approximate Time Period of Violations. Ongoing violations have occurred every day since at least September 3, 2017, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced 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 violated Proposition 65 because they failed to provide persons ingesting 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, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time-consuming litigation.

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
September 3, 2020
Page 3

Please direct all questions concerning this notice to ERC at the above listed address and telephone number.

Sincerely,



Chris Heptinstall
Executive Director
Environmental Research Center

Attachments

Certificate of Merit
Certificate of Service
OEHHA Summary (to Kerry Group PLC; Kerry Inc.; Kerry Foods Inc.; and Kerry
Luxembourg S.A.R.L. and their Registered Agents for Service of Process only)
Additional Supporting Information for Certificate of Merit (to AG only)

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
September 3, 2020
Page 4

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Kerry Group PLC; Kerry Inc.; Kerry Foods Inc.; and Kerry Luxembourg S.A.R.L.

I, Chris Heptinstall, declare:

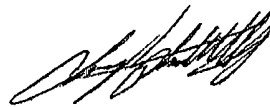
1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am the Executive Director 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 §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: September 3, 2020

Chris Heptinstall

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
September 3, 2020
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CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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 and over the age of 18 years of age. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On September 3, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** were served on the following parties when a true and correct copy thereof was sent via electronic mail to the parties listed below, through their attorney pursuant to agreement:

Kerry Group PLC; Kerry Inc.;
Kerry Foods Inc.; Kerry Luxembourg S.A.R.L.
c/o Merrit Jones
Bryan Cave Leighton Paisner LLP
3 Embarcadero Center Fl 7
San Francisco, CA 94111
Email: merrit.jones@bclplaw.com

On September 3, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §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
Post Office Box 70550
Oakland, CA 94612-0550

On September 3, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §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 each of the parties listed below:

Nancy O’Malley, District Attorney
Alameda County
7677 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

Stacey Grassini, Deputy District Attorney
Contra Costa County
900 Ward Street
Martinez, CA 94553
sgrassini@contracostada.org

Barbara Yook, District Attorney
Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249
Prop65Env@co.calaveras.ca.us

Thomas L. Hardy, District Attorney
Inyo County
168 North Edwards Street
Independence, CA 93526
inyoda@inyocounty.us

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
September 3, 2020
Page 6

Michelle Latimer, Program Coordinator
Lassen County
220 S. Lassen Street
Susanville, CA 96130
mlatimer@co.lassen.ca.us

Jeannine M. Pacioni, District Attorney
Monterey County
1200 Aguajito Road
Monterey, CA 93940
Prop65DA@co.monterey.ca.us

Gary Lieberstein, District Attorney
Napa County
931 Parkway Mall
Napa, CA 94559
CEPD@countyofnapa.org

Paul E. Zellerbach, District Attorney
Riverside County
3072 Orange Street
Riverside, CA 92501
Prop65@rivcoda.org

Anne Marie Schubert, District Attorney
Sacramento County
901 G Street
Sacramento, CA 95814
Prop65@sacda.org

Summer Stephan, District Attorney
San Diego County
330 West Broadway
San Diego, CA 92101
SanDiegoDAProp65@sdcda.org

Mark Ankorn, Deputy City Attorney
San Diego City Attorney
1200 Third Avenue
San Diego, CA 92101
CityAttyProp65@sandiego.gov

Alethea Sargent, Assistant District Attorney
White Collar Division
San Francisco District Attorney's Office
350 Rhode Island Street
North Building, Suite 400N
San Francisco, CA 94103
alethea.sargent@sfgov.org

Valerie Lopez, Deputy City Attorney
San Francisco City Attorney
1390 Market Street, 7th Floor
San Francisco, CA 94102
Valerie.Lopez@sfcityattorney.org

Tori Verber Salazar, District Attorney
San Joaquin County
222 E. Weber Avenue, Room 202
Stockton, CA 95202
DAConsumer.Environmental@sjcda.org

Eric J. Dobroth, Deputy District Attorney
San Luis Obispo County
County Government Center Annex, 4th Floor
San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

Christopher Dalbey, Deputy District Attorney
Santa Barbara County
1112 Santa Barbara Street
Santa Barbara, CA 93101
DAProp65@co.santa-barbara.ca.us

Bud Porter, Supervising Deputy District Attorney
Santa Clara County
70 W Hedding St
San Jose, CA 95110
EPU@da.sccgov.org

Jeffrey S. Rosell, District Attorney
Santa Cruz County
701 Ocean Street
Santa Cruz, CA 95060
Prop65DA@santacruzcounty.us

Stephan R. Passalacqua, District Attorney
Sonoma County
600 Administration Dr
Sonoma, CA 95403
jbarnes@sonoma-county.org

Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

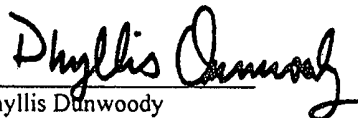
Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

Jeff W. Reisig, District Attorney
Yolo County
301 Second Street
Woodland, CA 95695
cfepd@yolocounty.org

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
September 3, 2020
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On September 3, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, 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 with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on September 3, 2020, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
September 3, 2020
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Service List

District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012	District Attorney, San Bernardino County 303 West Third Street San Bernardino, CA 92415	San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, Sierra County 100 Courthouse Square, 2 nd Floor Downieville, CA 95936	
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, El Dorado County 778 Pacific St. Placerville, CA 95667	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Sutter County 463 2 nd Street Yuba City, CA 95991	
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012	

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCYTHE 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

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>.

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.

² See Section 25501(a)(4).

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

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.

EXHIBIT E



Environmental Research Center

3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
619-500-3090

September 10, 2020

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I am the Executive Director of Environmental Research Center, Inc. ("ERC"). ERC 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, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC 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 §25249.5 *et seq.*, with respect to the products 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. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 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.

General Information about Proposition 65. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is attached with the copy of this letter served to the alleged Violators identified below.

Alleged Violators. The names of the companies covered by this notice that violated Proposition 65 (hereinafter the "Violators") are:

Kerry Group PLC
Kerry Inc.
Kerry Foods Inc.
Kerry Luxembourg S.A.R.L.

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
September 10, 2020
Page 2

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:

1. **Big Train Blended Ice Coffee Caramel Latte - Lead**
2. **Big Train Blended Ice Coffee Coffee - Lead**
3. **Big Train Kidz Kreamz Blended Crème Bubble Gum- Lead**
4. **Big Train Blended Ice Coffee No Sugar Added Mocha - Lead**
5. **Big Train Blended Ice Coffee Mocha - Lead**
6. **Big Train Chai Tea Latte Vanilla Chai - Lead**
7. **Big Train Dragonfly Blended Crème Honeydew - Lead**
8. **Big Train Blended Crème Vanilla Bean - Lead**
9. **Big Train Blended Crème Watermelon - Lead**
10. **Big Train Chai Tea Latte Caramel Chai - Lead**
11. **Big Train Chai Tea Latte Gingerbread Chai - Lead**
12. **Big Train Chai Tea Latte Chocolate Chai - Lead**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

Route of Exposure. The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least September 10, 2017, 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 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 violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

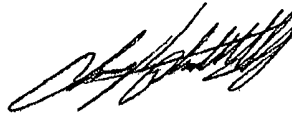
Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
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three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time-consuming litigation.

Please direct all questions concerning this notice to ERC at the above listed address and telephone number.

Sincerely,



Chris Heptinstall
Executive Director
Environmental Research Center

Attachments

Certificate of Merit
Certificate of Service
OEHHA Summary (to Kerry Group PLC; Kerry Inc.; Kerry Foods Inc.; and Kerry Luxembourg S.A.R.L. and their Registered Agents for Service of Process only)
Additional Supporting Information for Certificate of Merit (to AG only)

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
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CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Kerry Group PLC; Kerry Inc.; Kerry Foods Inc.; and Kerry Luxembourg S.A.R.L.

I, Chris Heptinstall, declare:

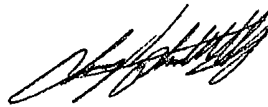
1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am the Executive Director 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 §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: September 10, 2020

Chris Heptinstall

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
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CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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 and over the age of 18 years of age. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On September 10, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** were served on the following parties when a true and correct copy thereof was sent via electronic mail to the parties listed below, through their attorney pursuant to agreement:

Kerry Group PLC; Kerry Inc.;
Kerry Foods Inc.; Kerry Luxembourg S.A.R.L.
c/o Merrit Jones
Bryan Cave Leighton Paisner LLP
3 Embarcadero Center Fl 7
San Francisco, CA 94111
Email: merrit.jones@bclplaw.com

On September 10, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §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
Post Office Box 70550
Oakland, CA 94612-0550

On September 10, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §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 each of the parties listed below:

Nancy O'Malley, District Attorney
Alameda County
7677 Oakport Street, Suite 650
Oakland, CA 94621
CEPDPprop65@acgov.org

Stacey Grassini, Deputy District Attorney
Contra Costa County
900 Ward Street
Martinez, CA 94553
sgrassini@contracostada.org

Barbara Yook, District Attorney
Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249
Prop65Env@co.calaveras.ca.us

Thomas L. Hardy, District Attorney
Inyo County
168 North Edwards Street
Independence, CA 93526
inyoda@inyocounty.us

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
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Michelle Latimer, Program Coordinator
Lassen County
220 S. Lassen Street
Susanville, CA 96130
mlatimer@co.lassen.ca.us

Jeannine M. Pacioni, District Attorney
Monterey County
1200 Aguajito Road
Monterey, CA 93940
Prop65DA@co.monterey.ca.us

Gary Lieberstein, District Attorney
Napa County
931 Parkway Mall
Napa, CA 94559
CEPD@countyofnapa.org

Paul E. Zellerbach, District Attorney
Riverside County
3072 Orange Street
Riverside, CA 92501
Prop65@rivcoda.org

Anne Marie Schubert, District Attorney
Sacramento County
901 G Street
Sacramento, CA 95814
Prop65@sacda.org

Summer Stephan, District Attorney
San Diego County
330 West Broadway
San Diego, CA 92101
SanDiegoDAProp65@sdca.org

Mark Ankorn, Deputy City Attorney
San Diego City Attorney
1200 Third Avenue
San Diego, CA 92101
CityAttyProp65@sandiego.gov

Alethea Sargent, Assistant District Attorney
White Collar Division
San Francisco District Attorney's Office
350 Rhode Island Street
North Building, Suite 400N
San Francisco, CA 94103
alethea.sargent@sfgov.org

Valerie Lopez, Deputy City Attorney
San Francisco City Attorney
1390 Market Street, 7th Floor
San Francisco, CA 94102
Valerie.Lopez@sfcityattorney.org

Tori Verber Salazar, District Attorney
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222 E. Weber Avenue, Room 202
Stockton, CA 95202
DAConsumer.Environmental@sjcda.org

Eric J. Dobroth, Deputy District Attorney
San Luis Obispo County
County Government Center Annex, 4th Floor
San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

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1112 Santa Barbara Street
Santa Barbara, CA 93101
DAProp65@co.santa-barbara.ca.us

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San Jose, CA 95110
EPU@da.sccgov.org

Jeffrey S. Rosell, District Attorney
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701 Ocean Street
Santa Cruz, CA 95060
Prop65DA@santacruzcounty.us

Stephan R. Passalacqua, District Attorney
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600 Administration Dr
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jbarnes@sonoma-county.org

Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

Jeff W. Reising, District Attorney
Yolo County
301 Second Street
Woodland, CA 95695
cfepd@yolocounty.org

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
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On September 10, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, 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 with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on September 10, 2020, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
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Service List

District Attorney, Alpine
County
P.O. Box 248
Markleeville, CA 96120

District Attorney, Amador
County
708 Court Street, Suite 202
Jackson, CA 95642

District Attorney, Butte
County
25 County Center Drive, Suite
245
Oroville, CA 95965

District Attorney, Colusa
County
346 Fifth Street Suite 101
Colusa, CA 95932

District Attorney, Del Norte
County
450 H Street, Room 171
Crescent City, CA 95531

District Attorney, El Dorado
County
778 Pacific St.
Placerville, CA 95667

District Attorney, Fresno
County
2220 Tulare Street, Suite 1000
Fresno, CA 93721

District Attorney, Glenn
County
Post Office Box 430
Willows, CA 95988

District Attorney, Humboldt
County
825 5th Street 4th Floor
Eureka, CA 95501

District Attorney, Imperial
County
940 West Main Street, Ste 102
El Centro, CA 92243

District Attorney, Kern County
1215 Truxtun Avenue
Bakersfield, CA 93301

District Attorney, Kings
County
1400 West Lacey Boulevard
Hanford, CA 93230

District Attorney, Lake County
255 N. Forbes Street
Lakeport, CA 95453

District Attorney, Los Angeles
County
Hall of Justice
211 West Temple St., Ste 1200
Los Angeles, CA 90012

District Attorney, Madera
County
209 West Yosemite Avenue
Madera, CA 93637

District Attorney, Marin
County
3501 Civic Center Drive,
Room 130
San Rafael, CA 94903

District Attorney, Mariposa
County
Post Office Box 730
Mariposa, CA 95338

District Attorney, Mendocino
County
Post Office Box 1000
Ukiah, CA 95482

District Attorney, Merced
County
550 W. Main Street
Merced, CA 95340

District Attorney, Modoc
County
204 S Court Street, Room 202
Alturas, CA 96101-4020

District Attorney, Mono
County
Post Office Box 617
Bridgeport, CA 93517

District Attorney, Nevada
County
201 Commercial Street
Nevada City, CA 95959

District Attorney, Orange
County
401 West Civic Center Drive
Santa Ana, CA 92701

District Attorney, Placer
County
10810 Justice Center Drive,
Ste 240
Roseville, CA 95678

District Attorney, Plumas
County
520 Main Street, Room 404
Quincy, CA 95971

District Attorney, San Benito
County
419 Fourth Street, 2nd Floor
Hollister, CA 95023

District Attorney, San
Bernardino County
303 West Third Street
San Bernardino, CA 92415

District Attorney, San Mateo
County
400 County Ctr., 3rd Floor
Redwood City, CA 94063

District Attorney, Shasta
County
1355 West Street
Redding, CA 96001

District Attorney, Sierra
County
100 Courthouse Square, 2nd
Floor
Downieville, CA 95936

District Attorney, Siskiyou
County
Post Office Box 986
Yreka, CA 96097

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

District Attorney, Stanislaus
County
832 12th Street, Ste 300
Modesto, CA 95354

District Attorney, Sutter
County
463 2nd Street
Yuba City, CA 95991

District Attorney, Tehama
County
Post Office Box 519
Red Bluff, CA 96080

District Attorney, Trinity
County
Post Office Box 310
Weaverville, CA 96093

District Attorney, Tuolumne
County
423 N. Washington Street
Sonora, CA 95370

District Attorney, Yuba
County
215 Fifth Street, Suite 152
Marysville, CA 95901

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

San Jose City Attorney's
Office
200 East Santa Clara Street,
16th Floor
San Jose, CA 95113

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCYTHE 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

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>.

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.

² See Section 25501(a)(4).

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

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.

Superior Court of California, County of Alameda
Hayward Hall of Justice

Case Number RG21086254

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage pre-paid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 24405 Amador Street, Hayward, CA.

Executed on: June 15, 2021

Poss. Charles
Environmental Research Center. Inc.
3111 Camino Del Rio North
Suite 400
San Diego. CA 92108

Chad Finke Executive Officer / Clerk of the Superior Court

By *S. Mitchell Hawkins*
Deputy Clerk