

LAW OFFICE OF  
**MICHAEL FREUND**

1919 ADDISON STREET, SUITE 105  
BERKELEY, CALIFORNIA 94704-1101

TEL (510) 540-1992  
FAX (510) 540-5543  
EMAIL FREUND1@AOL.COM

February 20, 2013

**VIA CERTIFIED MAIL**

David B. Dillon, Chairman and CEO  
The Kroger Co.  
1014 Vine Street  
Cincinnati, OH 45202-1100

Office of the California Attorney General  
Proposition 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
P.O. Box 70550  
Oakland, CA 94612-0550

**VIA PRIORITY MAIL**

District Attorneys of All California Counties  
and Select City Attorneys  
(See Attached Certificate of Service)

**Re: Notice of Violation Against The Kroger Co. for Violation of California Health & Safety  
Code Section 25249.5 et seq.**

Dear Addressees:

I represent The Chemical Toxin Working Group, a California non-profit corporation dedicated to reducing the amount of chemical toxins in consumer products. The Chemical Toxin Working Group was created by David Steinman, a committed environmentalist, journalist, consumer health advocate, publisher and author. His major books include Diet for a Poisoned Planet (1990, 2007); The Safe Shopper's Bible (1995); Living Healthy in a Toxic World (1996); and Safe Trip to Eden: Ten Steps to Save the Planet Earth from Global Warming Meltdown (2007). Through this Notice of Violation, The Chemical Toxin Working Group seeks to reduce consumer exposures to lead in the products set forth herein.

This letter constitutes notification that the Kroger Co. ("Kroger") has violated the warning requirement of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with section 25249.5 of the Health and Safety Code). The product subject to this Notice of Violation and the chemical in the product identified as exceeding allowable levels is:

**Ralphs Lite Mandarin Oranges, Peeled Segments in Mandarin Orange Juice – lead**

The Kroger Co. has manufactured, marketed, distributed and/or sold the above product which has exposed and continue to expose numerous individuals within California to lead. This chemical was listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer on October 1, 1992 and as a chemical known to cause developmental toxicity, and male and female reproductive toxicity on February 27, 1987. The time period of these violations commenced one

year after the listed dates above. The primary route of exposure has been through ingestion.

Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to certain listed chemicals. Kroger is in violation of Proposition 65 because the company failed to provide a warning to consumers that they are being exposed to lead. (22 C.C.R. section 12601.) While in the course of doing business, the company is knowingly and intentionally exposing consumers to this chemical without first providing a clear and reasonable warning. (Health and Safety Code section 25249.6.) The method of warning should be a warning that appears on the product's label. 22 C.C.R. section 12601 (b)(1) (A). There are no warnings currently present on the company's label for these products.

Proposition 65 requires that notice and intent to sue be given to a violator 60-days before the suit is filed. With this letter, The Chemical Toxin Working Group gives notice of the alleged violations to the noticed party and the appropriate governmental authorities. This Notice of Violation covers all violations of Proposition 65 that are currently known to the noticing party from information now available. The Chemical Toxin Working Group is continuing its investigation that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, and referenced as Appendix A, has been provided to the noticed party.

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

Sincerely,



Michael Freund

cc: The Chemical Toxin Working Group

Attachments:

Certificate of Merit  
Certificate of Service  
OEHHA Summary to The Kroger Co.  
Additional Supporting Information for Certificate of Merit (to Attorney General only)

**CERTIFICATE OF MERIT**

**Health and Safety Code Section 25249.7 (d)**

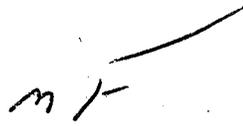
I, Michael Freund hereby declare:

1. This Certificate of Merit accompanies the attached Notice of Violation in which it is alleged that the party identified in the Notice has violated Health and Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party The Chemical Toxin Working Group. The Notice of Violation alleges that the party identified has exposed persons in California to lead from specified consumer products without providing a Proposition 65 warning. Please refer to the Notice of Violation for additional details regarding the product names and alleged violations.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the subject of the action. In particular, I have consulted with the laboratory who conducted the testing for lead regarding these products and I have relied on the testing results. The testing was conducted by a reputable testing laboratory by experienced scientists. These facts, studies or other data derived through this investigation overwhelmingly demonstrate that the party identified in the Notice of Violation exposes persons to lead through ingestion.
4. Based on the information obtained through the testing laboratory and on other information in my possession, I believe there is sufficient evidence that human exposures exist from exposure to the listed products from the noticed party. Furthermore, 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 the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.

5. The copy of this Certificate of Merit served on the California Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & Safety Code Section 25249.7 (h) (2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies or other data reviewed by those persons.

Dated: February 19, 2013



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Michael Freund  
Attorney for The Chemical Toxin Working Group

CERTIFICATE OF SERVICE

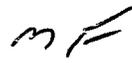
I am a citizen of the United States and a resident of the County of Alameda. I am over the age of eighteen years and not a party to the within entitled action. My business address is 1919 Addison Street, Suite 105, Berkeley, California 94704. On February 20, 2013 I served the within:

**Notice of Violation Against The Kroger Co. for Violation of California Health & Safety Code Section 25249.5 et seq. and Certificate of Merit**

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

See attached Service List

I, Michael Freund, declare under penalty of perjury that the foregoing is true and correct. Executed on February 20, 2013 at Berkeley, California

  
\_\_\_\_\_  
Michael Freund

## Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Los Angeles County 210 West Temple Street, Suite 18000 Los Angeles, CA 90012	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Francisco County 850 Bryant Street, Suite 322 San Francisco, CA 94103	District Attorney, Ventura County 800 South Victoria Ave, Suite 314 Ventura, CA 93009
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Joaquin County 222 E. Weber Ave. Rm. 202 Stockton, CA 95202	District Attorney, Yolo County 301 2 <sup>nd</sup> Street Woodland, CA 95695
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, San Luis Obispo County 1035 Palm St, Room 450 San Luis Obispo, CA 93408	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, San Mateo County 400 County Ctr., 3 <sup>rd</sup> Floor Redwood City, CA 94063	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	San Diego City Attorney's Office 1200 3 <sup>rd</sup> Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Contra Costa County 900 Ward Street Martinez, CA 94553	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Santa Clara County 70 West Hedding Street San Jose, CA 95110	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	San Jose City Attorney's Office 200 East Santa Clara Street, 16 <sup>th</sup> Floor San Jose, CA 95113
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Monterey County Post Office Box 1131 Salinas, CA 93902	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Napa County 931 Parkway Mall Napa, CA 94559	District Attorney, Sierra County PO Box 457 Downieville, CA 95936	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Nevada County 110 Union Street Nevada City, CA 95959	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Humboldt County 825 5th Street 4 <sup>th</sup> Floor Eureka, CA 95501	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Sonoma County 600 Administration Drive, Room 212J Santa Rosa, CA 95403	
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Stanislaus County 832 12 <sup>th</sup> Street, Ste 300 Modesto, CA 95354	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Riverside County 3960 Orange Street Riverside, CA 92501	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Sacramento County 901 "G" Street Sacramento, CA 95814	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2 <sup>nd</sup> Floor Hollister, CA 95023	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Lassen County 220 South Lassen Street, Ste. 8 Susanville, CA 96130	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004	District Attorney, Tulare County 221 S. Mooney Blvd., Room 224 Visalia, CA 93291	