

**Michael Freund & Associates**

1919 Addison Street, Suite 105  
Berkeley, CA 94704  
Voice: 510.540.1992 • Fax: 510.540.5543

Michael Freund, Esq.  
Ryan Hoffman, Esq.

OF COUNSEL:  
Denise Ferkich Hoffman, Esq.

August 8, 2013

**VIA CERTIFIED MAIL**

**VIA PRIORITY MAIL**

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

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

Alan J. Reed, CFO  
Ralphs Grocery Company  
1100 West Artesia Boulevard  
Compton, CA 90220

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

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent The Chemical Toxin Working Group, Inc. ("CTWG") a California non-profit corporation dedicated to reducing the amount of chemical toxins in consumer products. CTWG 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, CTWG seeks to reduce consumer exposures to lead in the products set forth herein.

This letter constitutes notification that The Kroger Co. and Ralphs Grocery Company have 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 products subject to this Notice of Violation and the chemical in the products identified as exceeding allowable levels are:

- Campbell's Chunky New England Clam Chowder - Lead
- Crown Prince Fancy Whole Smoked Oysters in Cottonseed Oil - Lead

Dole Mandarin Oranges in Light Syrup - Lead  
Progresso Traditional Manhattan Clam Chowder (Gluten Free) - Lead  
Geisha Fancy Smoked Oysters in Cottonseed Oil - Lead  
Geisha Whole Baby Clams - Lead  
Snow's by Bumble Bee Minced Clams in Clam Juice - Lead  
MW Polar Oysters Fancy Whole - Lead  
Chicken of the Sea Whole Oysters - Lead  
Gefen Mandarin Oranges in Light Syrup - Lead

These companies have manufactured, marketed, distributed and/or sold the above products which have 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. These violations have occurred every day since at least August 8, 2010 and will continue every day until the lead is removed from the product or until clear and reasonable warnings are provided. 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. The companies are in violation of Proposition 65 because they 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 companies are 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 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, CTWG 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. CTWG 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, Inc.

Attachments:

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

**CERTIFICATE OF MERIT**

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

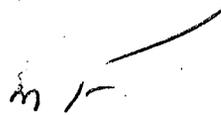
I, Michael Freund hereby declare:

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, Inc. 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: August 8, 2013



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Michael Freund  
Attorney for The Chemical Toxin Working Group,  
Inc.

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 August 8, 2013 I served the within:

Notice of Violation Against The Kroger Co. and Ralphs Grocery Company for Violation of California Health & Safety Code Section 25249.5 et seq. and Certificate of Merit (Supporting Documentation sent to Attorney General only)

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 to the names set forth on the Notice of Violation and on the attached Service List.

I, Michael Freund, declare under penalty of perjury that the foregoing is true and correct. Executed on August 8, 2013 at Berkeley, California

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

## Service List

- District Attorney, Alameda County  
1225 Fallon Street, Suite 900  
Oakland, CA 94612
- 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, Calaveras County  
891 Mountain Ranch Road  
San Andreas, CA 95249
- District Attorney, Colusa County  
346 Fifth Street Suite 101  
Colusa, CA 95932
- District Attorney, Contra Costa County  
900 Ward Street  
Martinez, CA 94553
- District Attorney, Del Norte County  
450 H Street, Room 171  
Crescent City, CA 95531
- District Attorney, El Dorado County  
515 Main Street  
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  
325 5th Street 4<sup>th</sup> Floor  
Eureka, CA 95501
- District Attorney, Imperial County  
140 West Main Street, Ste 102  
El Centro, CA 92243
- District Attorney, Inyo County  
130 W. Line Street  
Bishop, CA 93514
- District Attorney, Kern County  
215 Truxtun Avenue  
Bakersfield, CA 93301
- District Attorney, Kings County  
400 West Lacey Boulevard  
Hanford, CA 93230
- District Attorney, Lake County  
55 N. Forbes Street  
Lakeport, CA 95453
- District Attorney, Lassen County  
20 South Lassen Street, Ste. 8  
Susanville, CA 96130
- District Attorney, Los Angeles County  
210 West Temple Street, Suite 18000  
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 94432
- 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, Monterey County  
Post Office Box 1131  
Salinas, CA 93902
- District Attorney, Napa County  
931 Parkway Mall  
Napa, CA 94559
- District Attorney, Nevada County  
110 Union 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, Riverside County  
3960 Orange Street  
Riverside, CA 92501
- District Attorney, Sacramento County  
901 "G" Street  
Sacramento, CA 95814
- District Attorney, San Benito County  
419 Fourth Street, 2<sup>nd</sup> Floor  
Hollister, CA 95023
- District Attorney, San Bernardino County  
316 N. Mountain View Avenue  
San Bernardino, CA 92415-0004
- District Attorney, San Diego County  
330 West Broadway, Suite 1300  
San Diego, CA 92101
- District Attorney, San Francisco County  
850 Bryant Street, Suite 322  
San Francisco, CA 94103
- District Attorney, San Joaquin County  
222 E. Weber Ave. Rm. 202  
Stockton, CA 95202
- District Attorney, San Luis Obispo County  
1035 Palm St, Room 450  
San Luis Obispo, CA 93408
- District Attorney, San Mateo County  
400 County Cir., 3<sup>rd</sup> Floor  
Redwood City, CA 94063
- District Attorney, Santa Barbara County  
1112 Santa Barbara Street  
Santa Barbara, CA 93101
- District Attorney, Santa Clara County  
70 West Hedding Street  
San Jose, CA 95110
- District Attorney, Santa Cruz County  
701 Ocean Street, Room 200  
Santa Cruz, CA 95060
- District Attorney, Shasta County  
1355 West Street  
Redding, CA 96001
- District Attorney, Sierra County  
PO Box 457  
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, Sonoma County  
600 Administration Drive,  
Room 212J  
Santa Rosa, CA 95403
- District Attorney, Stanislaus County  
832 12<sup>th</sup> Street, Ste 300  
Modesto, CA 95354
- District Attorney, Sutter County  
446 Second 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, Tulare County  
221 S. Mooney Blvd., Room 224  
Visalia, CA 93291
- District Attorney, Tuolumne County  
423 N. Washington Street  
Sonora, CA 95370
- District Attorney, Ventura County  
800 South Victoria Ave, Suite 314  
Ventura, CA 93009
- District Attorney, Yolo County  
301 2<sup>nd</sup> Street  
Woodland, CA 95695
- 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 Diego City Attorney's Office  
1200 3rd Avenue, Ste 1620  
San Diego, CA 92101
- San Francisco, City Attorney  
City Hall, Room 234  
1 Dr Carlton B Goodlett PL  
San Francisco, CA 94102
- San Jose City Attorney's Office  
200 East Santa Clara Street,  
16<sup>th</sup> Floor  
San Jose, CA 95113