

# 60-DAY NOTICE OF VIOLATION

SENT IN COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE § 25249.7(d)

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**DATE:** March 22, 2016

**TO:** Alice Ho, President - Leeber Limited USA;  
Madhu Natarajan, CEO - FoodServiceWarehouse.com, LLC;  
California Attorney General's Office;  
District Attorney's Office for 58 Counties; and  
City Attorneys for San Francisco, San Diego, San Jose, Sacramento and Los Angeles

**FROM:** Susan Davia

**RE:** Copper Mugs with Brass Handles

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## I. INTRODUCTION

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My name is Susan Davia. I am a citizen of the State of California acting in the interest of the general public. I seek to promote awareness of exposures to toxic chemicals in products sold in California and, if possible, to improve human health by reducing hazardous substances contained in such items. This Notice is provided to the public agencies listed above pursuant to California Health & Safety Code § 25249.6 *et seq.* ("Proposition 65"). As noted above, notice is also being provided to the alleged violators Leeber Limited USA and FoodServiceWarehouse.com, LLC (collectively, "Violator"). The violations covered by this Notice consist of the product exposures, routes of exposure, and types of harm potentially resulting from exposure to the toxic chemical ("listed chemical") identified below, as follows:

|                     |                                           |
|---------------------|-------------------------------------------|
| Product Exposure:   | See Section VII. Exhibit A                |
| Listed Chemical:    | Lead and Lead Compounds                   |
| Routes of Exposure: | Ingestion, Dermal, Inhalation             |
| Types of Harm:      | Birth Defects and Other Reproductive Harm |

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## II. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

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The specific types of products that are causing consumer and occupational exposures in violation of Proposition 65, and that are covered by this Notice, are listed under "Product Category/Type" in Exhibit A in Section VII below. All products within the type covered by this Notice shall be referred to hereinafter as "products." The sales of these products in California dating at least as far back as March 2014, are subject to this Notice. As a result of the sales of these products, exposures to each identified listed chemical have been occurring without clear and reasonable warnings as required by Proposition 65. Without proper warnings regarding the toxic effects of exposure to the listed chemical resulting from contact with the products, California citizens lack the information necessary to make informed decisions on whether and how to eliminate ( or reduce) the risk of exposure to the toxic chemical from the reasonably foreseeable use of the products.

### CONSUMER PRODUCT EXPOSURE

California citizens, through the act of buying, acquiring or utilizing the products, are exposed to the listed chemical. Children, men and women of childbearing age ingest the listed chemical when they transfer the listed chemical from the products to their mouths through hand-to-mouth activities. Listed chemical exposure may, and likely will, continue to occur for a significant period after contact

with the products stops. Children, men and women of childbearing age are exposed to the listed chemical through direct dermal contact when they, among other activities, handle or touch the products during packing, unpacking and use or otherwise come into contact during use of the products or coming into close proximity with others using the products. Children, men and women of childbearing age ingest the listed chemical when they directly contact the product with their mouth or place or hold the product in their mouths. Indirect chemical exposure is also reasonably likely to occur when children, men and women of childbearing age eat food while handling the products or handle objects or items that have been placed or stored on or near the products and have accumulated chemical transfer as a result.

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### III. CONTACT INFORMATION

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Please direct all questions concerning this notice to me through my counsel's office at the following address:

Susan Davia  
c/o Gregory Sheffer  
Sheffer Law Firm  
81 Throckmorton Ave., Suite 202  
Mill Valley, CA 94941  
Email: [sheffesq@aol.com](mailto:sheffesq@aol.com)  
Telephone: (415) 388-0911

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### IV. PROPOSITION 65 INFORMATION

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For general information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health Hazard Assessment's ("OEHHA") Proposition 65 Implementation Office at (916) 445-6900. For the Violator's reference, I have attached a copy of "Proposition 65: A Summary" which has been prepared by OEHHA.

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### V. RESOLUTION OF NOTICED CLAIMS

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Based on the allegations set forth in this Notice, I intend to file a citizen enforcement lawsuit against the alleged Violator unless such Violator enters into a binding written agreement to: (1) recall products already sold or undertake best efforts to ensure that the requisite health hazard warnings are provided to those who have received such products; (2) provide clear and reasonable warnings for products sold in the future or reformulate such products to eliminate the listed chemical exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health & Safety Code § 25249.7 (b). If the alleged Violator is interested in resolving this dispute without resorting to time-consuming and expensive litigation, please feel free to contact my counsel identified in Section III above. It should be noted that neither my counsel nor I can: (1) finalize any settlement until after the 60-day notice period has expired; nor (2) speak for the Attorney General or any District or City Attorney who received this Notice. Therefore, while reaching an agreement with me will resolve my claims, such agreement may not satisfy the public prosecutors.

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### VI. ADDITIONAL NOTICE INFORMATION

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Identified below is a specific example of a product recently purchased and witnessed as being available for purchase or use in California that is within the category or type of offending product covered by this Notice. Based on publicly available information, the retailers, distributors and/or manufacturers of the examples within the categories or types of product are also provided below. I

believe and allege that the sale of the offending products also has occurred without the requisite Proposition 65 "clear and reasonable warnings" at one or more locations and/or via other means including, but not limited to, transactions made over-the-counter, business-to-business, through the internet and/or via a catalog by the Violator and other retailers and distributors of the manufacturer.

| Product*                                                     | Retailer                 | Manufacturer/Distributor |
|--------------------------------------------------------------|--------------------------|--------------------------|
| copper mugs with handles or other components made with brass | FoodServiceWarehouse.com | Leeber Limited USA       |

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## VII. EXHIBIT A

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| Product Category/Type                                        | Such As*                                             | Toxins                 |
|--------------------------------------------------------------|------------------------------------------------------|------------------------|
| copper mugs with handles or other components made with brass | Elegance 16 oz. solid copper Moscow Mule mug (90381) | Lead or lead compounds |

\*The specifically identified example of the category or type of product that is subject to this Notice is for the recipient's benefit to assist in its investigation of, among other things, the magnitude of potential exposure to the listed chemical from other items within the product category/type listed in Exhibit A. *It is important to note that this example is not meant to be an exhaustive or comprehensive identification of each specific offending product of the type listed under "Product Category/Type" in Exhibit A.* Further, it is this citizen's position that the alleged Violator is obligated to continue to conduct in good faith an investigation into other specific products within the type or category described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipient's custody or control) during the relevant period so as to ensure that the requisite toxic warnings were and are provided to California citizens prior to purchase.

# CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Gregory M. Sheffer, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the party identified in the notice has violated Health and Safety Code § 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party.
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 this action
4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the 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. The California sale of the subject products was completed without the communication of any compliant statutory warning regarding the alleged chemical exposure.
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including information identified in Health and 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: March 22, 2016

Sheffer Law Firm



Gregory M. Sheffer

**PROOF OF SERVICE**

I am employed in the County of Marin, State of California. I am a citizen of the United States, over the age of 18 years, and not a party to the within action. My business address is 81 Throckmorton Avenue, Suite 202, Mill Valley, CA 94941.

On the date indicated below, I served the following documents, described as:

**60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(d);**

**PROPOSITION 65: A SUMMARY (SERVED ONLY ON VIOLATORS);**

**CERTIFICATE OF MERIT; AND**

**CERTIFICATE OF MERIT ATTACHMENTS (SERVED ONLY ON THE ATTORNEY GENERAL)**

(1) on each entity or other mandatory recipient listed below with a complete postal mailing address by placing a true and correct copy of the foregoing document(s) in a sealed envelope addressed to each interested party as set forth hereafter and depositing each such envelope, with postage thereon fully prepaid, for collection and mailing with the United States Postal Service or agent authorized to accept mail on behalf of the United States Postal Service and (2) on each entity or other mandatory recipient listed below with an electronic mail address by electronically mailing PDF copies of the foregoing documents to them at such designated electronic address (with delivery confirmation requested and without receiving any unresolved return message of failed delivery).

|                                                                                     |                                                                                                            |                                                                                                                                 |
|-------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|
| Alice Ho, President<br>Leeber Limited USA<br>115 Pencader Drive<br>Newark, DE 19702 | Madhu Natarajan, CEO<br>FoodServiceWarehouse.com, LLC<br>84 Inverness Circle East<br>Englewood, CO 80112   |                                                                                                                                 |
| Attorney General of the State of California<br><i>(electronic service only)</i>     | The District Attorney for Each of the 58 counties in California<br><i>(see attached list of addresses)</i> | The City Attorney for Los Angeles, San Diego, San Jose, San Francisco and Sacramento<br><i>(see attached list of addresses)</i> |

I also caused to be served the same documents on the Attorney General of the State of California by electronically uploading a copy to the California Attorney General’s Website at <https://oag.ca.gov/prop65/add-60-day-notice>,

Executed this 22<sup>nd</sup> day of March 2016, at Mill Valley, California. I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Heidi Boissonneau

# SERVICE LIST

The Honorable Nancy O'Malley  
Alameda County District Attorney  
1225 Fallon Street, Room 900  
Oakland, CA 94612

The Honorable Terese Drabec  
Alpine County District Attorney  
270 Laramie Street, PO BOX 248  
Markleeville, CA 96120

The Honorable Todd Riebe  
Amador County District Attorney  
708 Court Street  
Jackson, CA 95642

The Honorable Michael Ramsey  
Butte County District Attorney  
25 County Center Drive  
Oroville, CA 95965

The Honorable Barbara Yook  
Calaveras County District Attorney  
891 Mountain Ranch Road  
San Andreas, CA 95249

The Honorable John Poyner  
Colusa County District Attorney  
346 Fifth Street  
Colusa, CA 95932

The Honorable Stacey Grassini, DDA  
Contra Costa County District Attorney  
c/o Stacey Grassini  
[sgrassini@contracosta.da.org](mailto:sgrassini@contracosta.da.org)

The Honorable Dale Trigg  
Del Norte County District Attorney  
450 H Street, Room 171  
Crescent City, CA 95531

The Honorable Vern Pierson  
El Dorado County District Attorney  
515 Main Street  
Placerville, CA 95667

The Honorable Lisa Smittcamp  
Fresno County District Attorney  
2220 Tulare Street, #1000  
Fresno, CA 93721

The Honorable Dwayne Stewart  
Glenn County District Attorney  
P.O. Box 430  
Willows, CA 95988

The Honorable Maggie Fleming  
Humboldt County District Attorney  
825 5th Street, Fourth Floor  
Eureka, CA 95501

The Honorable Gilbert Otero  
Imperial County District Attorney  
940 West Main Street, Suite 102  
El Centro, CA 92243

The Honorable Thomas Hardy  
Inyo County District Attorney  
168 North Edwards Street  
Independence, CA 93526

The Honorable Lisa Green  
Kern County District Attorney  
1215 Truxtun Avenue  
Bakersfield, CA 93301

The Honorable Keith Fagundas  
Kings County District Attorney  
1400 West Lacey Boulevard  
Hanford, CA 93230

The Honorable Donald Anderson  
Lake County District Attorney  
255 North Forbes Street  
Lakeport, CA 95453

The Honorable Stacey Montgomery  
Lassen County District Attorney  
c/o Michelle Latimer  
[mlatimer@co.lassen.ca.us](mailto:mlatimer@co.lassen.ca.us)

The Honorable Jackie Lacey  
Los Angeles County District Attorney  
210 West Temple Street, Suite 18000  
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The Honorable David Linn  
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209 West Yosemite Avenue  
Madera, CA 93637

The Honorable Edward Berberian  
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3501 Civic Center Drive, Room 130  
San Rafael, CA 94903

The Honorable Thomas Cooke  
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5101 Jones Street, P.O. Box 730  
Mariposa, CA 95338

The Honorable C. David Eyster  
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100 North State Street, P.O. Box 1000  
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The Honorable Larry Morse II  
Merced County District Attorney  
550 W. Main Street  
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The Honorable Jordan Funk  
Modoc County District Attorney  
204 S. Court Street, Suite 202  
Alturas, CA 96101

The Honorable Tim Kendall  
Mono County District Attorney  
P.O. Box 617  
Bridgeport, CA 93517

The Honorable Dean Flippo  
Monterey County District Attorney  
c/o Dije Andreu, Deputy DA  
[Prop65DA@co.monterey.ca.us](mailto:Prop65DA@co.monterey.ca.us)

The Honorable Gary Lieberstein  
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The Honorable Clifford Newell  
Nevada County District Attorney  
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Nevada City, CA 95959

The Honorable Tony Rackauckas  
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Santa Ana, CA 92701

The Honorable R. Scott Owens  
Placer County District Attorney  
10810 Justice Center Drive, Suite 240  
Roseville, CA 95678

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Quincy, CA 95971

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[Prop65@rivcoda.org](mailto:Prop65@rivcoda.org)

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San Bernardino, CA 92415-0502

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San Diego County District Attorney  
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The Honorable Gregory Alker, ADA  
San Francisco County District  
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The Honorable Tori Verber Salazar  
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222 East Weber Avenue, Room 202  
Stockton, CA 95201

The Honorable Dan Dow  
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San Luis Obispo, CA 93408

The Honorable Stephen Wagstaffe  
San Mateo County District Attorney  
400 County Center, Third Floor  
Redwood City, CA 94063

The Honorable Joyce Dudley  
Santa Barbara County District  
Attorney  
1112 Santa Barbara Street  
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The Honorable Yen Dang DDA  
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The Honorable Stephen Carlton  
Shasta County District Attorney  
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The Honorable Lawrence Allen  
Sierra County District Attorney  
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Downieville, CA 95936

The Honorable James Kirk Andrus  
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Yreka, CA 96097

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The Honorable Gregg Cohen  
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The Honorable Patrick McGrath  
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Los Angeles, CA 90012

The Honorable James Sanchez  
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Sacramento, CA 95814

The Honorable Jan Goldsmith  
Office of the City Attorney, San Diego  
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San Diego, CA 92101

The Honorable Dennis Herrera  
Office of the City Attorney, San  
Francisco  
1 Dr. Carlton B. Goodlett Place  
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The Honorable Richard Doyle  
Office of the City Attorney, San Jose  
200 East Santa Clara Street, 16th Floor  
San Jose, CA 95113

Office of the California Attorney General  
Proposition 65 Enforcement Reporting  
Via Electronic filing  
<https://oag.ca.gov/prop65/add-60-day-notice>