

NOTICE OF VIOLATION

California Safe Drinking Water and Toxic Enforcement Act

Lead in Kratom (Mitragyna Speciosa) Powder (Teas and Capsules)

December 4, 2020

This Notice of Violation (the "Notice") is provided to you pursuant to and in compliance with California Health and Safety Code section 25249.7(d).

- For general information regarding the California Safe Drinking Water and Toxic Enforcement Act, see the attached summary provided by the California EPA (copies not provided to public enforcement agencies).
- This Notice is provided by the Center for Environmental Health ("CEH"), 2201 Broadway, Suite 508, Oakland, CA 94612, (510) 655-3900. CEH is a nonprofit corporation dedicated to protecting the environment, improving human health, and supporting environmentally sound practices. Caroline Cox is the Senior Scientist of and a responsible individual within CEH.

Description of Violation:

- Violators: The names and addresses of the violators are:

PDX Aromatics LLC
2182 N. Lewis Ave
Portland, OR 97227

PDX Aromatics
2170 N. Lewis Ave
Portland, OR 97227

Phytoextractum
2170 N. Lewis Ave
Portland, OR 97227

- Time Period of Exposure: The violations have been occurring since at least December 4, 2017, and are ongoing.
- Provision of Proposition 65: This Notice covers the "warning provision" of Proposition 65, which is found at California Health and Safety Code Section 25249.6.
- Chemical(s) Involved: The names of the listed chemicals involved in these violations are lead and lead compounds ("Lead"). Exposures to Lead occur from consumption of the products identified in this Notice.

- Type of Product: The specific type of product causing these violations is kratom (*mitragyna speciosa*) powder (teas and capsules). Non-exclusive examples of this specific type of product are identified on the attached Exhibit 1.
- Description of Exposure: This Notice addresses consumer exposures to Lead from kratom (*mitragyna speciosa*) powder (teas and capsules) manufactured or sold by the alleged violators. Consumption of the products identified in this Notice results in human exposures to Lead. The products contain Lead. The primary route of exposure for the violations is direct ingestion when consumers drink tea containing kratom powder. These exposures occur in homes, workplaces and everywhere else throughout California where the products are consumed. No clear and reasonable warning is provided with these products regarding the carcinogenic or reproductive hazards of Lead.

Resolution of Noticed Claims:

Based on the allegations set forth in this Notice, CEH intends to file a citizen enforcement lawsuit against each alleged violator unless such violator agrees in a binding written instrument to: (1) recall products already sold; (2) provide clear and reasonable warnings for products sold in the future or reformulate such products to eliminate the Lead exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health and Safety Code Section 25249.7(b). If any alleged violator is interested in resolving this dispute without resort to expensive and time-consuming litigation, please feel free to contact CEH through its counsel identified below. It should be noted that CEH cannot: (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 CEH's 60-day Notice. Therefore, while reaching an agreement with CEH will resolve its claims, such agreement may not satisfy the public prosecutors.

Preservation of Relevant Evidence:

This Notice also serves as a demand that the alleged violators preserve and maintain all relevant evidence, including all electronic documents and data, pending resolution of this matter. Such relevant evidence includes but is not limited to all documents relating to the presence or potential presence of Lead in kratom (*mitragyna speciosa*) powder (teas and capsules); purchase and sales information for such products; efforts to comply with Proposition 65 with respect to such products; communications with any person relating to the presence or potential presence of Lead in such products; and representative exemplars of each unit of any such products sold by each alleged violator in the year preceding this Notice through the date of any trial of the claims alleged in this Notice.

Please direct any inquiries regarding this Notice to CEH's counsel Ryan Berghoff at Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117, (818) 640-6219 rberghoff@lexlawgroup.com.

EXHIBIT 1
December 4, 2020 Notice of Violation
Lead in Kratom (Mitragyna Speciosa) Powder (Teas and Capsules)

Names and Addresses of Responsible Parties	Non-Exclusive Example of the Products
PDX Aromatics LLC 2182 N. Lewis Ave Portland, OR 97227 PDX Aromatics 2170 N. Lewis Ave Portland, OR 97227	Kraken Kratom Mitragyna Speciosa Kratom OG Bali Powder SKU No. 700425226176 (KRT001b)
PDX Aromatics LLC 2182 N. Lewis Ave Portland, OR 97227 PDX Aromatics 2170 N. Lewis Ave Portland, OR 97227 Phytoextractum 2170 N. Lewis Ave Portland, OR 97227	Phytoextractum Mitragyna Speciosa Kratom Red MDT Powder Lot No. 20200731 (KRT004b)

CERTIFICATE OF MERIT
Health & Safety Code § 25249.7(d)

I, Ryan Berghoff, hereby declare:

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

2. I am an attorney with the Lexington Law Group, and I represent the noticing party, the Center for Environmental Health.

3. Members of my firm and 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 exposures to the listed chemical that is the subject of the action.

4. Based on the information obtained through those consultations, 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 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. The copy of the Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in 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.

December 4, 2020



Ryan Berghoff
Attorney for CENTER FOR
ENVIRONMENTAL HEALTH

1 **PROOF OF SERVICE**

2

3 I, Owen Sutter, declare:

4 I am a citizen of the United States and employed in the County of San Francisco, State of
5 California. I am over the age of eighteen (18) years and not a party to this action. My business
6 address is 503 Divisadero Street, San Francisco, CA 94117 and my email address is
osutter@lexlawgroup.com.

7 On December 4, 2020, I served the following document(s) on all interested parties in this
8 action by placing a true copy thereof in the manner and at the addresses indicated below:

9 **NOTICE OF VIOLATION OF CALIFORNIA SAFE DRINKING WATER AND
10 TOXIC ENFORCEMENT ACT;**

11 **CERTIFICATE OF MERIT;** and

12 **THE SAFE DRINKING AND TOXIC ENFORCEMENT ACT OF 1986**
13 **(PROPOSITION 65): A SUMMARY** (only sent to those on service list marked with an
14 asterisk).

15 ☒ **BY MAIL:** I am readily familiar with the firm's practice for collecting and processing mail
16 with the United States Postal Service ("USPS"). Under that practice, mail would be deposited
17 with USPS that same day with postage thereon fully prepaid at San Francisco, California in the
18 ordinary course of business. On this date, I placed sealed envelopes containing the above
19 mentioned documents for collection and mailing following my firm's ordinary business practices.

20 *Please see attached service list.*

21 ☒ **BY ELECTRONIC MAIL:** I transmitted a PDF version of the document(s) listed above via
22 email to the email address(es) indicated on the attached service list [or noted above] before 5 p.m.
23 on the date executed.

24 Stacey Grassini, Deputy District Attorney
25 Contra Costa County
26 900 Ward Street
27 Martinez, CA 94553
28 sgrassini@contracostada.org

Allison Haley, District Attorney
Napa County
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Michelle Latimer, Program Coordinator
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1 Paul E. Zellerbach, District Attorney
2 Riverside County
3 4075 Main Street
4 Riverside, CA 92501
5 Prop65@rivcoda.org

6 Jeff W. Reisig, District Attorney
7 Yolo County
8 301 Second Street
9 Woodland, CA 95695
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11 Dije Ndreu, Deputy District Attorney
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16 Tori Verber Salazar, District Attorney
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18 222 E. Weber Avenue, Room 202
19 Stockton, CA 95202
20 DAConsumer.Environmental@sjcda.org

21 Christopher Dalbey, Deputy District
22 Attorney, Santa Barbara County
23 1112 Santa Barbara Street
24 Santa Barbara, CA 93101
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26 San Francisco City Attorney's Office
27 City Hall, Room 234
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Anne Marie Schubert, District Attorney
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Nancy O'Malley, District Attorney
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Oakland, CA 94621
CEPDProp65@acgov.org

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 4, 2020 at San Francisco, California.



Owen Sutter

SERVICE LIST

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

District Attorney of Amador County
708 Court Street, Ste. 202
Jackson, CA 95642

District Attorney of Butte County
Administration Building
25 County Center Drive
Oroville, CA 95965

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

District Attorney of Del Norte County
450 H Street, Ste. 171
Crescent City, CA 95531

District Attorney of El Dorado County
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Placerville, CA 95667

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Fresno, CA 93721

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Eureka, CA 95501

District Attorney of Imperial County
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El Centro, CA 92243

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P.O. Drawer D
Independence, CA 93526

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1215 Truxtun Avenue
Bakersfield, CA 93301

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Hanford, CA 93230

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Lakeport, CA 95453

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Hall of Justice
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Los Angeles, CA 90012-3210

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Madera, CA 93637

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District Attorney of Modoc County
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District Attorney of San Benito County
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Hollister, CA 95023

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District Attorney of Yuba County
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Los Angeles, CA 90012

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San Jose, CA 95113

Phillip J. Cline, District Attorney
Tulare County
221 S. Mooney Avenue, Rm. 224
Visalia, CA 93291

California Attorney General's Office
Attention: Proposition 65 Coordinator and
Robert Thomas
1515 Clay Street, Ste. 2000
P.O. Box 70550
Oakland, CA 94612-0550

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