60-DAY NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE § 25249.7(d) (PROPOSITION 65)

Date: December 3, 2021

To: Carlos M. Giraldo, President, Cordialsa USA, Inc.;

Andrew R. Jassy, President and Chief Executive Officer, Amazon.com, Inc.

California Attorney General's Office;

District Attorney's Office for 58 Counties; and

City Attorneys for San Francisco, San Diego, San Jose, Sacramento & Los Angeles

From: Keep America Safe and Beautiful

I. <u>INTRODUCTION</u>

Keep America Safe and Beautiful is a California nonprofit corporation acting in the interest of the general public, pursuant to California Health & Safety Code § 25249.7(d). Keep America Safe and Beautiful seeks to promote awareness of exposures to toxic chemicals in products sold in California and, if possible, to improve human health by eliminating hazardous substances contained in such items, promoting corporate responsibility.

This 60-Day Notice of Violation ("**Notice**") is being provided to the alleged violators, Cordialsa USA, Inc. and Amazon.com, Inc. ("**Notice Recipients**"), as well as the California Attorney General's Office, the District Attorney's Offices for 58 Counties, and City Attorneys for San Francisco, San Diego, San Jose, Sacramento and Los Angeles.

Keep America Safe and Beautiful provides this Notice after identifying violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986, codified at California Health & Safety Code § 25249.5 et seq. ("Proposition 65"), based on the failure to provide a clear and reasonable health hazard warning in connection with the sale or use of the products, listed below, in the State of California. The Notice Recipients are hereby given notice they violated and continue to violate Proposition 65 with respect to the warning requirement, codified at California's Health & Safety Code § 25249.6: "No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or reproductive toxicity without first giving a clear and reasonable warning to such individual." Without proper warnings about the toxic effects of exposures to listed chemicals, citizens in California lack the information necessary to make informed decisions as to whether or how to eliminate or reduce their risk of exposure from the reasonably foreseeable use of products containing listed chemicals.

II. NATURE OF ALLEGED VIOLATIONS

Product. The specific type or category of products ("**Products**") that are the subject of this Notice are as follows:

| Exemplar Product | Category/Type | Retailer | Manufacturer/Distributor |
|----------------------------|---------------|-------------|--------------------------|
| CORDILLERA, NATURAL CACAO | Cacao Powder | Amazon.com, | Cordialsa USA, Inc. |
| POWDER 100% CACAO, 10-12% | | Inc. | |
| COCOA BUTTER, 1 lb/453.6 g | | | |
| Lot 012021 20:19 | | | |
| Best before 01292023 | | | |
| UPC 0 51817 50671 1 | | | |

Identified above is a specific example of Products recently purchased and witnessed as being available for sale or use in the State of California, within the *category* of offending products covered by this Notice. The identified retailers, manufacturers and/or distributors of the Products are based on publicly available information.

The Exemplar Product is identified for the Notice Recipients' benefit to assist in their investigation into the alleged violations that are the subject of this Notice. The specific identified Exemplar Product is not intended to be an exhaustive list of all such products potentially in violation of Proposition 65. It is Keep America Safe and Beautiful's position the Notice Recipients are now obligated to conduct a good faith investigation into other products within the category or of the type, identified above, that were grown, processed, manufactured, imported, sold or distributed for sale, or that have otherwise been in the Notice Recipients' custody or control during the relevant period, identified below, to ensure the requisite health hazard warnings are provided to individuals in California prior to purchase.

<u>Listed Chemicals.</u> The chemical that is the subject of this Notice is the heavy metal, cadmium (Cd). The State of California listed cadmium (Cd) as a chemical known to cause cancer on October 1, 1987, and as a chemical known to cause developmental toxicity and male reproductive toxicity on May 1, 1997.

Routes of Exposure. The exposures subject to this Notice result from ingesting the Products containing cadmium (Cd). Exposures occur when individuals, including children and women in their childbearing years, eat, drink, consume or otherwise ingest cacao powder containing cadmium and lead in accordance with the Products' reasonably foreseeable uses, resulting in exposures through ingestion.

<u>Violations and Time Period of Exposure.</u> Keep America Safe and Beautiful alleges the Notice Recipients knowingly and intentionally exposed, and continue to knowingly and intentionally expose, individuals within the State of California to cadmium (Cd) without first providing clear and reasonable health hazard warnings required by Proposition 65 to consumers and users informing them the Products can expose users to cadmium (Cd) and of the toxic effects of exposure to cadmium (Cd).

Exposures caused by the use of the Products have occurred each day since the Products were introduced into the California marketplace, but, at a minimum, since December 3, 2020, and, potentially, as far back as December 3, 2018. Because the Products lack clear and reasonable warnings regarding the toxic effects of exposures to cadmium and lead, each Product sold during this period and not accompanied by a warning constitutes a violation by the Notice Recipients and/or other sellers of the Products whether sold directly, through retailers located in or with locations in California, or via the internet to customers and individuals located in California. Moreover, these exposures are ongoing and will continue either until clear and reasonable warnings are provided to protect consumers and users or until this known toxic chemical is removed from the Products or reduced to allowable levels.

III. RESOLUTION OF NOTICED CLAIMS

Consistent with the public interest goals of Proposition 65, Keep America Safe and Beautiful seeks to pursue a constructive resolution of this matter to quickly rectify ongoing violations of California law. To that end, based on the allegations set forth in this Notice and pursuant to Health & Safety Code § 25249.7(d), Keep America Safe and Beautiful intends to file a private enforcement action in the public interest sixty (60) days after effective service of this Notice, unless the appropriate public enforcement agencies have commenced and are diligently

prosecuting an action to rectify these allegations. If the Notice Recipients seek to resolve the claims alleged in this Notice without litigation, they may contact Keep America Safe and Beautiful's counsel at the address listed below.

It should be noted neither Keep America Safe and Beautiful nor its counsel may: (1) finalize any settlement until after the expiration of the 60-day Notice period; or (2) speak for the California Attorney General or any District or City attorney in receipt of this Notice. Therefore, while reaching an agreement with Keep America Safe and Beautiful will satisfy its claims, the agreement may not satisfy any public prosecutors.

IV. GENERAL INFORMATION AND SUMMARY OF PROPOSITION 65

A copy of a summary of Proposition 65's provisions, prepared by the Office of Environmental Health Hazard Assessment ("**OEHHA**") is enclosed with the copy of the Notice served on the Notice Recipients for their reference. For further general information concerning Proposition 65, contact OEHHA's Proposition 65 Implementation Office at (916) 445-6900.

V. CERTIFICATE OF MERIT

Pursuant to Health & Safety Code § 25249.7(d) and Cal. Code. Regs. tit 11, § 3100, a Certificate of Merit is attached hereto. A copy of the Notice and Certificate of Merit is served on the California Attorney General and marked "Attorney General Copy: Contains Official Information Pursuant to Evidence Code Section 1040" with all supporting documentation, as required by Cal. Code. Regs. tit 11, § 3102, attached thereto.

VI. <u>CONTACT INFORMATION</u>

Please direct all questions, issues or communications regarding this 60-Day Notice of Violation and its potential resolution to Keep America Safe and Beautiful's counsel at the following address:

Keep America Safe and Beautiful c/o Laralei Paras, Esq. Rebecca Jackson, Esq. Seven Hills LLP 4 Embarcadero Center, Suite 1400 San Francisco, California 94111 Telephone: (415) 926-7247

<u>Attachments:</u> Certificate of Merit; Proof of Service; The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary (to Violator(s) only); and Additional Confidential Supporting Information for Certificate of Merit (to AG only.)

CERTIFICATE OF MERIT

Health and Safety Code § 25249.7(d)

Re: Keep America Safe and Beautiful's Notice of Proposition 65 Violations

- 1, Laralei Paras, hereby declare and certify:
- 1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code § 25249.6 by failing to provide clear and reasonable warnings.
- 2. I am an attorney 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 alleged exposure to the listed chemical that is the subject of the notice.
- 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 noticing party's case can be established and that 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 Attorney General attaches to it 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., the identity of the persons consulted with and relied on by the certifier and the facts, studies and data reviewed by those persons.

Dated: December 3, 2021

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury:

I am over the age of 18 years of age and not a party to this case. Seven Hills LLP's business address is 4 Embarcadero Center, Suite 1400, San Francisco, CA 94111.

On December 3, 2021, I caused to be served the following:

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

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY; and

CERTIFICATE OF MERIT

XXXX by **Certified First Class Mail** through the United States Postal Service by placing true and correct copies of the above documents in a sealed envelope, individually addressed to each alleged violator listed below and providing such envelope to a United States Postal Service Representative:

Carlos M. Giraldo, President Cordialsa USA, Inc. 24900 Pitkin Road, Ste 190 Spring, TX 77386-1972 Andrew R. Jassy President and C.E.O. Amazon.com, Inc. 410 Terry Ave. North Seattle, WA 98109-5210 Corporation Service Company Registered Agent for Amazon.com, Inc. 300 Deschutes Way SW, Ste 208 MC-CSC1 Tumwater, CA 98501

On December 3, 2021, I caused to be served true and correct copies of the following documents:

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

CERTIFICATE OF MERIT

XXXX by **First Class Mail** through the United States Postal Service by placing copies of the above documents in a sealed envelope, addressed to each entity on the attached "Service List" and providing such envelope to a United States Postal Representative, with correct postage.

XXXX via **Electronic Mail**, by sending copies of the above documents, addressed individually, to the Recipients listed on the attached "Electronic Mail Service List".

On December 3, 2021, I caused to be served true and correct copies of the following documents:

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

CERTIFICATE OF MERIT; and

CERTIFICATE OF MERIT ATTACHMENTS

XXXX via **Electronic Mail**, by uploading the documents, addressed to California Attorney General at their website address, listed under the "Electronic Upload Service List".

Executed on the 3rd day of December, 2021, at Folsom, California.

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SERVICE LIST

| The Honorable Michael Atwell Alpine County District Attorney P.O. Box 248 Markleeville, CA 96120 | The Honorable Jackie Lacey Los Angeles County District Attorney 211 West Temple Street, Ste 1200 Los Angeles, CA, 90012 | The Honorable Todd Riebe Amador County District Attorney 708 Court Street, #202 Jackson, CA 95642 |
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| The Honorable Michael Ramsey Butte County District Attorney 25 County Center Drive, Suite 245 Oroville, CA 95965 | The Honorable Matthew R. Beauchamp Colusa County District Attorney 346 5th Street, Suite 101 Colusa, CA 95932 | Del Norte County District Attorney 450 H street, Room 171 Crescent City, CA 95531 |
| The Honorable Vern Pierson El Dorado County District Attorney 778 Pacific Street Placerville, CA 95667 The Honorable Maggie Floring | The Honorable Gilbert Otero Imperial County District Attorney 940 West Main Street, Suite 102 El Centro, CA 92243 The Honorable Depold Anderson | The Honorable Dwayne Stewart Glenn County District Attorney P.O. Box 430 Willows CA 95988 The Honorable Lies Creen |
| The Honorable Maggie Fleming Humboldt County District Attorney 825 5 th Street, 4 th Floor Eureka, CA 95501 | The Honorable Donald Anderson Lake County District Attorney 255 N. Forbes Street Lakeport, CA 95453 | The Honorable Lisa Green Kern County District Attorney 1215 Truxtun Avenue Bakersfield, CA 93301 |
| The Honorable Keith Fagundes Kings County District Attorney 1400 West Lacey Blvd. Hanford, CA 93230 | The Honorable Mike Feuer Office of the City Attorney, Los Angeles Kames K. Hahn Hall East 200 North Main Street, 8 th Floor Los Angeles, CA 90012 | The Honorable David Linn Madera County District Attorney 209 West Yosemite Avenue Madera, CA 93637 |
| The Honorable Edward Berberian Marin County District Attorney 3501 Civic Center Drive, Room 130 San Rafael, CA 94903 | The Honorable Todd Spitzer Orange County District Attorney 300 North Flower Street Santa Ana, CA 92703 | The Honorable C. David Eyster Mendocino County District Attorney P.O. Box 1000 Ukiah, CA 9548 |
| The Honorable Birgit Fladager Stanislaus County District Attorney 832 12th street, Suite 300 Modesto, CA 95353 | The Honorable Candace Hooper San Benito District Attorney 419 4th Street Hollister, CA 95023 | The Honorable Tim Kendall Mono County District Attorney P.O. Box 2053 Mammoth Lakes, CA 93546 |
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| The Honorable Lawrence Allen Sierra County District Attorney 100 Courthouse Square Downieville, CA 95936 | The Honorable Gregg Cohen Tehama County District Attorney P.O. Box 519 Red Bluff, CA 96080 | The Honorable Patrick McGrath Yuba County District Attorney 215 Fifth street, Suite 152 Marysville, CA 95901 |
| The Honorable Jordan Funk Modoc County District Attorney 204 S. Court Street Room 202 Alturas, CA 96101 | | |

ELECTRONIC MAIL SERVICE LIST

| Alameda County District Attorney 2776 Oakptor Street, Suite 650 Oakland, CA 94621 Oakland, CA 94559 Oakland, CA 94559 Oakland, CA 94599 Oakland, CA 95695 Oakland, CA 94604 Oakland, CA 95695 Oakland, CA 9569 | | T = | T |
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| The Honorable Jeffrey S. Rosell Santa Cruz County District Attorney 1127 First St., Suire C Napa, CA 94559 Prop65DA@santacruzcounty us San Diego County District Attorney 300 West Broadway San Diego, CA 92101 Santa Cruz Ca 95060 Santa Cruz County District Attorney 300 West Broadway San Diego, CA 92101 Santa Cruz County District Attorney Santa Cruz Ca 95060 Santa Cruz County District Attorney Santa Cruz County District Attorney Santa Cruz County District Attorney Santa Clara County San Francisco Ca 94103 Santa Barbara County Santa Barbara Street Santa Barbara County Santa Barbara Street Santa Barbara County Santa Barbara County Santa Barbara Street Santa Barbara County Santa Barbara Street Santa Barbara Street Santa Barbara Street Santa Barbara County Santa Barbara Street Santa | | | |
| Santa County District Attorney 127 First St., Suite C Napa. CA 94559 Santa Cruz, CA 95060 Prop65DA@santacruzzounty.us San Diego, CA 92101 SanDiego DAProp65@sdcda.org Mark Ankson. Deputy City Attorney 220 S. Lassen Street 220 S. Lass | | | |
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| The Honorable Jeff W. Reisig | | | |
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| Sol Second Street Susanville, CA 96130 mlatimer@co.lassen.ca.us San Diego, CA 92101 CityAttyProp65@sandiego.gov Christopher Dalbey, Deputy District Attorney Santa Calara County Santa Barbara County Santa Barbara County Santa Barbara Street San Jose, CA 95110 San Francisco, CA 94103 alethea.sargent@sfgov.org DAProp65@co.santa-barbara.ca.us DAProp65@co.santa-barbara.ca.us Santa Barbara County Santa Barbara County Santa Barbara County Santa Barbara Street Santa Barbara, CA 93101 DAProp65@co.santa-barbara.ca.us Santa Barbara County Santa Barbara County Santa Barbara County Santa Barbara County Santa Barbara, CA 93101 DAProp65@co.santa-barbara.ca.us Santa Barbara County Santa Barbara Yook Calevras County Santa Barbara Co | The Honorable Jeff W. Reisig | Michelle Latimer, Program Coordinator | Mark Ankcorn, Deputy City Attorney |
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| Supervising Deputy District Attorney Santa Clara County 70 W Hedding Street San Jose, CA 95110 San Francisco, CA 94103 Alethea.sargent@sfgov.org The Honorable Gregory D. Totten, Ventura County District Attorney 800 S Victoria Avenue Ventura, CA 93009 San Andreas, CA 95249 San Francisco, CA 94103 Asa Andreas, CA 95249 Santa Barbara, CA 93101 DAProp65@co.santa-barbara.ca.us The Honorable Gregory D. Totten, Ventura County District Attorney 891 Mountain Ranch Road Ventura, CA 93009 San Andreas, CA 95249 San Francisco, CA 94102 Valerie Lopez, Deputy City Attorney 00ffice of the City Attorney 891 Mountain Ranch Road San Andreas, CA 95249 San Francisco, CA 94102 Valerie Lopez, Deputy City Attorney 00ffice of the City Attorney 1390 Market Street, 7th Floor San Lius Obispo County Deputy District Attorney San Luis Obispo County Deputy District Attorney San Luis Obispo County Dounty District Attorney San Luis Obispo, CA 93408 Monterey, CA 93408 Monterey, CA 94503 Sgrassini@contracostada.org In Honorable Thomas Hardy Inyo County District Attorney 168 N. Edwards Street Independence, CA 93526 Visalia, CA 95370 Prop65@co.tulare.ca.us The Honorable Paul E. Zellerbach Riverside County District Attorney 3072 Orange Street Riverside County District Attorney 3072 Orange Street Mariposa County District Attorney 3072 Orange Street Mariposa County District Attorney 3072 Orange Street Mariposa County District Attorney 550 West Main Street Ma | Bud Porter | | Christopher Dalbey, Deputy District |
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| San Jose, CA 95110 EPU@da.sccgov.org alethea.sargent@sfgov.org The Honorable Gregory D. Totten, Ventura County District Attorney 800 S Victoria Avenue 891 Mountain Ranch Road San Fancisco, CA 94102 Valerie Lopez, Deputy City Attorney Office of the City Attorney Office of the City Attorney San Fancisco, CA 94102 Valerie Lopez, Deputy City Attorney Office of the City Attorney San Fancisco, CA 94102 Valerie Lopez, Deputy City Attorney Valerie Lopez, Deputy City Attorney Valerie Lopez, Deputy City Attorney Office of the City Attorney 1390 Market Street, 7th Floor San Fancisco, CA 94102 Valerie Lopez, Deputy City Attorney San Fancisco, CA 94102 Valerie Lopez, Deputy City Attorney Valerie Lopez, Deputy City Attorney Valerie Lopez, Deputy City Attorney San Fancisco, CA 94102 Valerie Lopez, Deputy City Attorney Valerie Lopez, Deputy City Attorney San Fancis Attorney San Fancisco, CA 94102 Valerie Lopez, Deputy City Attorney San Fancis Attorney San Fancis Attorney San Fancis County District Attorney San Andreas County District Attorney San Fancis County District Attorney San Andreas County District Attorney Deputy District Attorney San Luis Obispo County Deputy District Attorney San Luis Obispo County | | 1 | |
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