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

Date: February 25, 2022
To: John Brooks, Jr., President, Adams & Brooks, 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 violator, Adams & Brooks, Inc. ("**Notice Recipient**"), 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 Recipient is hereby given notice it violated and continues 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 an informed decision as to whether or how to eliminate or reduce their risk of exposure from the reasonably foreseeable use of products containing listed chemicals.

II. <u>NATURE OF ALLEGED VIOLATIONS</u>

<u>Product</u>. 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
Hoffman's Cup-O-Gold Candy	Chocolate Candy	Smart &	Adams & Brooks, Inc.
UPC: 0 72965 11271 5		Final,	
INV 127027		Instacart	

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 Recipient's benefit to assist in its 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 Recipient is now obligated to conduct a good faith investigation into other products within the category or of the type, identified above, that were manufactured, imported, sold or distributed for sale, or that have otherwise been in the Notice Recipient's 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.

Listed Chemical. The chemical that is the subject of this Notice is the heavy metal, Lead. The State of California listed Lead as a chemical known to cause developmental toxicity, male reproductive toxicity, and female reproductive toxicity on February 27, 1987, and as a chemical known to cause cancer on October 1, 1992.

Routes of Exposure. The exposures subject to this Notice result from ingesting the Products containing Lead. Exposures occur when individuals, including children and women in their childbearing years, eat, consume, or otherwise ingest chocolate candy containing Lead in accordance with the Products' intended uses, resulting in exposures through ingestion. Individuals also ingest Lead when they touch or handle the Products, transferring the chemical from their fingers or hands to their mouths.

<u>Violations and Time Period of Exposure.</u> Keep America Safe and Beautiful alleges the Notice Recipient knowingly and intentionally exposed, and continues to knowingly and intentionally expose, individuals within the State of California to Lead, without first giving a health hazard warning regarding the chemical's toxic effects, as required by Proposition 65, by failing to provide clear and reasonable warnings to consumers and users the Products can expose users to Lead.

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 February 25, 2021, and, potentially, as far back as February 25, 2019. Because the Products lack clear and reasonable warnings regarding the toxic effects of exposures to Lead, each Product sold during this period and not accompanied by a warning constitutes a violation by the Notice Recipient and/or other sellers of the Products, whether sold directly through retailers located in, or with locations in, California, via the internet, or through catalog purchases by 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. <u>RESOLUTION OF NOTICED CLAIMS</u>

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 Recipient seeks to resolve the claims alleged in this Notice without litigation, it may contact Keep America Safe and Beautiful's counsel at the address listed below.

It should be noted neither Keep America Safe and Beautiful or its counsel can: (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 Recipient for its reference. For further general information concerning Proposition 65, contact OEHHA's Proposition 65 Implementation Office at (916) 445-6900.

V. <u>CERTIFICATE OF MERIT</u>

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. 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.)

Printed on 100% Post-Consumer Recycled Paper.

CERTIFICATE OF MERIT

Health and Safety Code § 25249.7(d)

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

- I, 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 and have assembled evidence attached to the copy for the California Attorney General as Exhibit 1 to this Certificate of Merit regarding the lack of warnings for the listed chemical that is the subject of the notice.
- 4. Based on the information obtained 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 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 that person.)

Dated: February 25, 2022

Laralei Paras

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 February 25, 2022, 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:

John Brooks, Jr., President Adams & Brooks, Inc. 4345 Hallmark Pkwy San Bernardino, CA 92407

On February 25, 2022, 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 Recipient listed on the attached "Electronic Mail Service List".

On February 25, 2022, 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 25th day of February, 2022, at Folsom, California.

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SERVICE LIST

The Honorable Michael Atwell	The Honorable Jackie Lacey	The Honorable Todd Riebe
Alpine County District Attorney	Los Angeles County District Attorney	Amador County District Attorney
P.O. Box 248	211 West Temple Street, Ste 1200	708 Court Street, #202
Markleeville, CA 96120	Los Angeles, CA, 90012	Jackson, CA 95642
The Honorable Michael Ramsey		Del Norte County District Attorney
Butte County District Attorney	Colusa County District Attorney	450 H street, Room 171
25 County Center Drive, Suite 245	346 5th Street, Suite 101	Crescent City, CA 95531
Oroville, CA 95965	Colusa, CA 95932	
The Honorable Vern Pierson	The Honorable Gilbert Otero	The Honorable Dwayne Stewart
	Imperial County District Attorney	Glenn County District Attorney
778 Pacific Street	940 West Main Street, Suite 102	P.O. Box 430
Placerville, CA 95667	El Centro, CA 92243	Willows CA 95988
The Honorable Maggie Fleming	The Honorable Donald Anderson	The Honorable Lisa Green
Humboldt County District Attorney	Lake County District Attorney	Kern County District Attorney
825 5 th Street, 4 th Floor	255 N. Forbes Street	1215 Truxtun Avenue
Eureka, CA 95501	Lakeport, CA 95453	Bakersfield, CA 93301
The Honorable Keith Fagundes	The Honorable Mike Feuer	The Honorable David Linn
Kings County District Attorney 1400	Office of the City Attorney, Los Angeles	Madera County District Attorney
West Lacey Blvd.	Kames K. Hahn Hall East	209 West Yosemite Avenue
Hanford, CA 93230	200 North Main Street, 8th Floor	Madera, CA 93637
	Los Angeles, CA 90012	
The Honorable Edward Berberian	The Honorable Todd Spitzer	The Honorable C. David Eyster
Marin County District Attorney	Orange County District Attorney	Mendocino County District Attorney
3501 Civic Center Drive, Room 130	300 North Flower Street	P.O. Box 1000
San Rafael, CA 94903	Santa Ana, CA 92703	Ukiah, CA 9548
The Honorable Birgit Fladager	The Honorable Candace Hooper	The Honorable Tim Kendall
Stanislaus County District Attorney	San Benito District Attorney	Mono County District Attorney
832 12th street, Suite 300	419 4th Street	P.O. Box 2053
Modesto, CA 95353	Hollister, CA 95023	Mammoth Lakes, CA 93546
The Honorable Stephen Wagstaffe	The Honorable Michael Ramos	The Honorable Stephanie Bridgett
San Mateo County District Attorney	San Bernardino County District Attorney	
400 County Center, Third Floor	303 W. Third Street	1355 West Street
Redwood City, CA 94063	San Bernardino, CA 92415	Redding, CA 96001
The Honorable James Kirk Andrus	The Honorable Krishna Abrams	The Honorable Amanda Hopper
Siskiyou County District Attorney	Solano County District Attorney	Sutter County District Attorney
P.O. Box 986	675 Texas Street, Suite 4500	446 Second Street, Suite 102
Redding, CA 96097	Fairfield, CA 94533	Yuba City, CA 95991
The Honorable Laura Krieg	The Honorable James Sanchez	The Honorable Eric Heryford
Tuolumne County District Attorney		Trinity County District Attorney
423 N. Washington Street	915 I Street, 4 th Floor	P.O. Box 310
Sonora, CA 95370	Sacramento, CA 95814	Weaverville, CA 96093
The Honorable Lawrence Allen	The Honorable Gregg Cohen	The Honorable Patrick McGrath
Sierra County District Attorney	Tehama County District Attorney	Yuba County District Attorney
100 Courthouse Square	P.O. Box 519	215 Fifth street, Suite 152
Downieville, CA 95936	Red Bluff, CA 96080	Marysville, CA 95901
The Honorable Jordan Funk		19101 yovinc, CA 93701
Modoc County District Attorney		
204 S. Court Street Room 202		
Alturas, CA 96101	l	

ELECTRONIC MAIL SERVICE LIST

Alameda County District Attorney San Joaquin County District Attorney Sacramento County District Attorney 776 Oakport Street, Suite 650 222 E. Weber Avenue, Room 202 Sucramento, CA 95814 CEPDProp65@acgir.org DAConsumer.Environmental@sicda.org Prop65@acgir.seq.acg.acg.acg.acg.acg.acg.acg.acg.acg.acg			
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Riverside County District AttorneySonoma County District AttorneyPlumas County District Attorney3072 Orange Street600 Administration Drive520 Main Street, Room 404Riverside, CA 92501Sonoma, CA 95403Quincy, CA 95971Prop65@rivcoda.orgjbarnes@sonoma-county.orgdavidhollister@countyofplumas.com			
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Prop65@rivcoda.org jbarnes@sonoma-county.org davidhollister@countyofplumas.com			
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	The Honorable Walter W. Wall	The Honorable Kimberly Lewis	The Honorable Morgan Briggs Gire
Mariposa County District Attorney Merced County District Attorney Placer County District Attorney			
P.O. Box 730 550 West Main Street 10810 Justice Center Drive			
Mariposa, CA 95338 Merced, CA 95340 Roseville, CA 95678			
mcda@mariposacounty.org Prop65@countyofmerced.com prop65@placer.ca.gov			prop65@placer.ca.gov
Nora V. Frimann, City Attorney Lisa A. Smittcamp, District Attorney			
200 E. Santa Clara Street, 16th Floor 2100 Tulare Street		2100 Tulare Street	
San Jose, CA 96113 Fresno, CA 93721			
Proposition65notices@sanjoseca.gov consumerprotection@fresnocountyca.gov	Proposition65notices@sanjoseca.gov	consumerprotection@fresnocountyca.gov	

ELECTRONIC UPLOAD SERVICE LIST

Office of the California Attorney General Proposition 65 Enforcement Reporting ATTN: Prop 65 Coordinator P.O. Box 70550 Oakland, CA 94612-0550 https://oag.ca.gov/prop65/add-60-day-notice