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

Date: September 19, 2022
To: Kevin Whaley, Chief Executive Officer, KageWerks, 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, KageWerks, 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
Diagonal Wire Cutter	Tools with	KageWerks, Inc.	KW Cages,
SKU: 2040	vinyl/PVC grips	kwcages.com	KageWerks, Inc.

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 di(2-ethylhexyl) phthalate ("**DEHP**"). The State of California listed DEHP as a chemical known to cause cancer on January 1, 1988, and as a chemical known to cause developmental and male reproductive toxicity on October 24, 2003.

**Routes of Exposure.** The exposures subject to this Notice result from the purchase, acquisition and handling of Products containing DEHP. Exposures occur when individuals, including children and women of childbearing age, handle, touch or otherwise utilize tools with vinyl/PVC grips containing DEHP in accordance with the Products' reasonably foreseeable and intended uses, resulting in exposures through ingestion and dermal absorption. Individuals ingest DEHP when they touch or handle the Products, transferring the chemical from their fingers or hands to their mouths. Dermal absorption of DEHP occurs when individuals handle, touch, or utilize the Products in accordance with their reasonably foreseeable and intended uses.

<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 DEHP, 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 advising the Products can expose users to DEHP.

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 September 19, 2021, and, potentially, as far back as September 19, 2019. Because the Products lack clear and reasonable warnings regarding the toxic effects of exposures to DEHP, 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 Kimberly Gates Johnson, 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, Kimberly Gates Johnson, 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 and the lack of warnings for 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 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 (2) the facts, studies or other data reviewed by those persons.

Dated: September 19, 2022

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Kimberly Gates Johnson

### 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 September 19, 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:

Kevin Whaley, CEO KageWerks, Inc. 9565 Pathway St. Santee, CA 92071

On September 19, 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 September 19, 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 19<sup>th</sup> day of September, 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 <sup>th</sup> Street, 4 <sup>th</sup> 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 <sup>th</sup> 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			
7776 Oakport Street, Suite 650       222 E. Weber Avenue, Room 202       901 G Street         Oakland, CA 94621       Stockton, CA 95202       Sacramento, CA 95814         CEPDProp65@acgiv.org       DAConsumer.Environmental@sjcda.org       Prop65@ascda.org         The Honorable Allison Haley       The Honorable Jeffrey S. Rosell       The Honorable Summer Stephan         Sand Cuzz County District Attorney       Santa Cruz County District Attorney       San Diego County District Attorney         Napa, C.A 94559       Santa Cruz, CA 95060       San Diego, CA 92101         CEPD@countyofnapa.org       Prop65D.@stantacruzzounty.us       SanDiego, CA 92101         CIPD@countyofnapa.org       Prop65D.%stantacruzzounty.us       San Diego, CA 92101         Sol Second Street       200 Street       1200 Third Avenue         Woodland, CA 94695       Susanville, CA 96130       San Diego, CA 92101         Strept       San Francisco, CA 94103       Santa Barbara County         San Francisco, CA 94103       Santa Barbara County       San Francisco, CA 94103         San Jase, CA 95110       San Francisco, CA 94103       Santa Barbara County         San Jasec, CA 95110       San Francisco, CA 94103       Santa Barbara, CA 93101         PU@das.sccgov.org       DAProp65@sdcca, 92101       Santa Barbara Caus         PU@das.sccgov.org       Posof	The Honorable Nancy O'Malley	The Honorable Tori Verber Salzar	Honorable Anne Marie Schubert
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The Honorable Allison Haley         The Honorable Jeffrey S. Rosell         The Honorable Summer Stephan           Napa County District Attorney         Santa Cruz Conty District Attorney         San Diego County District Attorney           1127 First St, Suite C         701 Ocean Street         San Diego CA 92101           CEPD@countyofnapa.org         Prop65DA@santacruz.county.us         San Diego CA 92101           CEPD@countyDistrict Attorney         Lassen County         Mark Ankcorn, Deputy City Attorney           Yol Sceond Street         220 S. Lassen Street         1200 Third Avenue           Woodland, CA 95695         Susanville, CA 96130         San Diego, CA 92101           Supervising Deputy District Attorney         Alethea M. Sargent         Christopher Dalbey,           Supervising Deputy District Attorney         San Francisco District Attorney of Sant Barbara County         Santa Barbara Street           San Jose, CA 95110         San Francisco, CA 94103         Santa Barbara, CA 93101         Santa Barbara, CA 93101           EPU/Qda.scogov.org         Dethorable Barbara Yook         Valeric Lopez, Deputy City Attorney           Yentura, CA 93009         San Andras, CA 95249         San Francisco, CA 94103           Santa Barbara, CA 93009         San Andras, CA 95249         San Francisco, CA 94102           Sanderas, Ca 93009         San Andras, CA 95249         San Francisco, CA			
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Yolo County District AttorneyLassen CountyCity of San Diego301 Second Street220 S. Lassen Street1200 Third AvenueWoodland, CA 95695Susanville, CA 96130San Diego, CA 92101etpd@yolocounty.orgmlatimer@co.lassen.ea.usCityAttyProp65@sandiego.govBud PorterAlethea M. SargentChristopher Dalbey,Supervising Deputy District AttorneySans Francisco District Attorney's OfficeSanta Barbara County70 W Hedding Street350 Rhode Island Street1112 Santa Barbara County70 W Hedding Street350 Rhode Island Street1112 Santa Barbara, CA 9310170 W Hedding Street350 Rhode Island Street1112 Santa Barbara, CA 9310170 W Hedding Street350 Rhode Island StreetSanta Barbara, CA 9310170 W Hedding Street350 Rhode Island Street1112 Santa Barbara, CA 9310170 W Hedding Street350 Rhode Island StreetSanta Barbara, CA 9310170 W Hedding Street360 S Victoria AvenueValerie Lopez, Deputy City Attorney80 S Victoria Avenue891 Mountain Ranch Road1390 Market Street, 7the Floor81 Mountain Ranch Road1390 Market Street, 7the FloorSan Andreas, CA 9524981 StreetCounty Govt Center Annex, 4the FloorJeannine M. Pacioni90 Ward StreetCounty Govt Center Annex, 4the Floor1200 Aguetio Monterey, CA 93400900 Ward StreetCounty Govt Center Annex, 4the Floor1200 Aguetio Monterey, CA 93940900 Ward StreetCounty Obstrict AttorneyNonterey, CA 93940900 Surici AttorneyThe Honorable Phillip	CEPD@countyofnapa.org	Prop65DA@santacruzcounty.us	SanDiegoDAProp65@sdcda.org
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## **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