

AMENDED 60-DAY NOTICE OF VIOLATION

(Pursuant to California Health & Safety Code §§ 25249.5, *et seq.*)

January 25, 2023

To:

W. Rodney McMullen, CEO
The Kroger Co. dba Kore Nutrition
c/o CSC – Lawyers Incorporating Service
2710 Gateway Oaks Dr. Suite 150N
Sacramento, CA 95833

Yael Cosset, President
Vitacost.com, Inc.
1014 Vine Street
Cincinnati, OH 45202

CC: California Attorney General’s Office;
District Attorney’s Offices for All California Counties; and
City Attorneys for San Francisco, San Diego, San Jose, Sacramento, and Los Angeles

I. INTRODUCTION

California Toxic Research Institute, LLC (“CTRI”), located at 2102 Business Center Drive, Suite 130, Irvine, CA 92612, telephone (415)949-1166, is the noticing entity, acting in the interest of the general public. It seeks to reduce or eliminate the presence of hazardous substances in consumer products sold in California, and to ensure that California consumers are aware of the presence of such substances in consumer goods so that they can make an educated effort to limit their own exposure where deemed necessary. CTRI identifies Celina Phillipson as the responsible individual within the entity.

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 violators, The Kroger Co. dba Kore Nutrition and Vitacost.com, Inc. (the “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
Types of Harm:	Birth Defects and Other Reproductive Harm

II. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

The specific type of product that is causing consumer exposures in violation of Proposition 65, and that is covered by this Notice, is 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 the “products.” The sales of these products in California dating back to at least April 28, 2022 are subject to this Notice. As a result of sales of these products, exposures to the listed chemical have been occurring without clear and reasonable warnings as required by Proposition 65. Without proper warnings regarding the toxic effects of exposures 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.

California consumers are exposed to the listed chemical through the act of buying, acquiring or utilizing the products. By way of example but not limitation, direct exposures occur when people (including children) ingest the product per the product label instructions, which recommend that such supplement be regularly consumed. The concentration of the noted contaminant compound present within each recommended serving (as suggested by the product manufacturer) constitutes a significant contaminant dose exposure to consumers through the intended daily ingestion of the product.

III. CONTACT INFORMATION

Please direct all questions concerning this notice to CTRI at the following address:

Tanya E. Moore, Esq.
MOORE LAW FIRM, P.C.
300 S. First Street Ste. 342
San Jose, CA 95113
Telephone (408) 298-2000
Email: service@moorelawfirm.com

IV. PROPOSITION 65 INFORMATION

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 Violators’ reference, attached is a copy of “Proposition 65: A Summary,” which has been prepared by OEHHA.

V. RESOLUTION OF NOTICED CLAIMS

Based on the allegations set forth in this Notice, CTRI intends to file a citizen enforcement lawsuit against the alleged Violators unless such Violators enter 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 exposure of California citizens to the listed chemical(s); and (3) pay an appropriate civil penalty based on the factors enumerated in California Health & Safety Code § 25249.7(b). If the alleged Violators are interested in resolving this dispute without resorting to time-consuming and expensive litigation, please feel free to contact CTRI’s counsel identified

in Section III above. It should be noted that neither CTRI’s counsel nor CTRI 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 CTRI will resolve its claims; such agreement may not satisfy the public prosecutors.

VI. ADDITIONAL NOTICE INFORMATION

(THIS INFORMATION IS NOT REQUIRED TO BE PROVIDED UNDER CAL. CODE REGS., TITLE 22 § 12903(b)(4).)

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 example within the category or type of product are also provided below. CTRI believes and alleges 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 Violators and other distributors and retailers of the manufacturer.

<i>Product*</i>	<i>Retailer(s)</i>	<i>Manufacturer(s)/Distributor(s)</i>
Kore Nutrition Powdered Dietary Supplement Blends	Vitacost.com, Inc. The Kroger Co. dba Kore Nutrition	The Kroger Co. dba Kore Nutrition

VII. EXHIBIT A

<i>Product Category/Type</i>	<i>Such As*</i>	<i>Toxins</i>
Kore Nutrition Powdered Dietary Supplement Blends	Kore Nutrition Greens – Concentrated Greens, Vegetable & Fiber Blends UPC# 8 10050 1105 1	Lead and Lead Compounds
	Kore Nutrition Reds – Superfoods Blend UPC# 8 10050 11004 4	

*The specifically identified example of the type of product that is subject to this Notice is for the recipients’ benefit to assist in their investigation of, among other things, the magnitude of potential exposures 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 CTRI’s position that the alleged Violators are 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 recipients’ 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

(Pursuant to California Health & Safety Code § 25249.7(d))

I, Tanya E. Moore, 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 the attorney for the noticing party;
3. I have consulted with one or more persons with relevant and appropriate experience or experience 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 these 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 Violators will be able to establish any of the affirmative defenses set forth in the statute; and
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 & 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: January 25, 2023

Tanya Moore

Tanya Moore (Jan 25, 2023 14:26 PST)

Tanya E. Moore

CERTIFICATE OF SERVICE BY MAIL

I, Jessica Mendoza, hereby declare:

1. I am, and was at the time of service hereinafter mentioned, a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 300 South First Street, San Jose, California, 95113.

2. On January 25, 2023, I served the following documents:

- Amended 60-Day Notice of Violation
- Certificate of Merit
- Updated “The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary”

on the following party by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below, and depositing it at a United States Postal Service Office for delivery by First Class Mail:

W. Rodney McMullen, CEO
The Kroger Co. dba Kore Nutrition
c/o CSC – Lawyers Incorporating Service
2710 Gateway Oaks Dr. Suite 150N
Sacramento, CA 95833

Yael Cosset, President
Vitacost.com, Inc.
1014 Vine Street
Cincinnati, OH 45202

3. On January 25, 2023, I served the following documents:

- Amended 60-Day Notice of Violation
- Certificate of Merit

on each of the parties on the service list attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the service list attached hereto, and depositing it at a United States Postal Service Office for delivery by First Class Mail.

4. On January 25, 2023, I served the following documents:

- Amended 60-Day Notice of Violation
- Certificate of Merit

on the following party by causing a true and correct .PDF copy thereof to be sent via electronic mail to the party listed below, pursuant to Cal. Code Regs., title. 27, § 25903(c)(1):

Alameda County District Attorney
CEPDProp65@acgov.org

Contra Costa County District Attorney
sgrassini@contracostada.org

Inyo County District Attorney
inyoda@inyocounty.us

Mariposa County District Attorney
mcda@mariposacounty.org

Monterey County District Attorney
Prop65DA@co.monterey.ca.us

Nevada County District Attorney
DA.Prop65@co.nevada.ca.us

Plumas County District Attorney
davidhollister@countyofplumas.com

Sacramento County District Attorney
Prop65@sacda.org

San Diego Deputy City Attorney
CityAttyProp65@sandiego.gov

San Francisco County District Attorney
alexandra.grayner@sfgov.org

San Luis Obispo County District Attorney
edobroth@co.slo.ca.us

Santa Clara County District Attorney
EPU@da.sccgov.org

Santa Cruz County District Attorney
Prop65DA@santacruzcounty.us

Tulare County District Attorney
Prop65@co.tulare.ca.us

Yolo County District Attorney
cfepd@yolocounty.org

Calaveras County District Attorney
Prop65Env@co.calaveras.ca.us

Fresno County District Attorney
consumerprotection@fresnocountyca.gov

Lassen County District Attorney
mlatimer@co.lassen.ca.us

Merced District Attorney
Prop65@countyofmerced.com

Napa County District Attorney
CEPD@countyofnapa.org

Placer County District Attorney
davidhollister@countyofplumas.com

Riverside County District Attorney
Prop65@rivcoda.org

San Diego County District
AttorneyCityAttyCrimProp65@sandiego.gov

San Francisco Deputy City Attorney
Valeria.lopez@sfcityatty.org

San Joaquin County District Attorney
DAConsumer.Environmental@sjcda.org

Santa Barbara County District Attorney
DAProp65@co.santa-barbara.ca.us

Santa Clara County City Attorney
Proposition65notices@sanjoseca.gov

Sonoma County District Attorney
jbarnes@sonoma-county.org

Ventura County District Attorney
daspecialops@ventura.org

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

Dated: January 25, 2023



Jessica Mendoza

SERVICE LIST

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

Amador County District Attorney
708 Court Street #202
Jackson, CA 95642

Butte County District Attorney
25 County Center Drive, Suite 245
Oroville, CA 95965

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

Del Norte County District Attorney
450 H Street, Room 171
Crescent City, CA 95531

El Dorado County District Attorney
778 Pacific Street
Placerville, CA 95667

Glenn County District Attorney
P.O. Box 430
Willows, CA 95988

Humboldt County District Attorney
825 5th Street, 4th Floor
Eureka, CA 95501

Imperial County District Attorney
940 West Main Street, Suite 102
El Centro, CA 92243

Kern County District Attorney
1215 Truxtun Avenue, 4th Floor
Bakersfield, CA 93301

Kings County District Attorney
1400 West Lacey Boulevard
Hanford, CA 93230

Lake County District Attorney
255 North Forbes Street
Lakeport, CA 95453

Los Angeles County District Attorney
211 West Temple Street
Suite 1200
Los Angeles, CA 90012

Madera County District Attorney
209 West Yosemite Avenue
Madera, CA 93637

Marin County District Attorney
3501 Civic Center Drive, Room 130
San Rafael, CA 94903

Mendocino County District Attorney
100 North State Street, P.O. Box 1000
Ukiah, CA 95482

Modoc County District Attorney
204 S. Court Street, Suite 202
Alturas, CA 96101

Mono County District Attorney
278 Main St
Bridgeport, CA 93517

Orange County District Attorney
401 Civic Center Drive West
Santa Ana, CA 92701

San Benito County District Attorney
419 4th Street, Second Floor
Hollister, CA 95203

San Bernardino County District Attorney
303 West 3rd Street, 6th Floor
San Bernardino, CA 92415-0502

San Mateo County District Attorney
400 County Center, Third Floor
Redwood City, CA 94063

Shasta County District Attorney
1355 West Street
Redding, CA 96001

Sierra County District Attorney
100 Courthouse Square
Downieville, CA 95936

Siskiyou County District Attorney
P.O. Box 986
Yreka, CA 96097

Solano County District Attorney
675 Texas Street, Suite 4500
Fairfield, CA 94533

Stanislaus County District Attorney
832 12th Street, Suite 300
Modesto, CA 95354

Sutter County District Attorney
466 Second Street, Suite 102
Yuba City, CA 95991

Tehama County District Attorney
444 Oak Street, Room L
Red Bluff, CA 96080

Trinity County District Attorney
P.O. Box 310
Weaverville, CA 96093

Tuolumne County District Attorney
423 North Washington Street
Sonora, CA 95370

Yuba County District Attorney
215 Fifth Street
Marysville, CA 95901

Office of the City Attorney, Los Angeles
800 City Hall East
200 North Main Street
Los Angeles, CA 90012

Office of the City Attorney, Sacramento
915 I Street, 4th Floor
Sacramento, CA 95814