SIXTY-DAY NOTICE OF INTENT TO SUE FOR VIOLATION OF THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986
(Cal. Health & Safety Code § 25249.5, et seq.)

DATE: June 21, 2024

TO: Actual Veggies, Inc.
The Kroger Company dba Ralphs
Attorney General's Office
District Attorney's Office for All California Counties; and
City Attorneys for Los Angeles, San Diego, San Jose and San Francisco

FROM: Pure.Clean.Healthy LLC

RE: Violation of California Health & Safety Code § 25249.6 concerning Super Greens Veggie Burger with broccoli, kale, white bean & spinach containing Lead

Dear Alleged Violators and Appropriate Public Enforcement Agencies:

Torch & Stone Law, APC represents Pure.Clean.Healthy LLC, a California limited liability company ("PCH"). PCH, acting in the interest of the general public, seeks, among other things, to improve and protect the health of the people of California, protect the environment and consumer rights, and hold corporations accountable.

PCH has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), codified at California Health & Safety Code § 25249.5 *et seq*., perpetrated by Actual Veggies, Inc. and The Kroger Company dba Ralphs (collectively "Alleged Violators"). Pursuant to California Health & Safety Code § 25249.7(d), PCH serves this SIXTY-DAY NOTICE OF INTENT TO SUE FOR VIOLATION OF THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 ("Notice") on the Alleged Violators for violations of California Health & Safety Code § 25249.6.

The violations addressed by this Notice occurred at numerous locations in each county in California as reflected in the district attorney addresses listed in the attached Distribution List.

Noticing Entity, Responsible Individual: The entity giving this Notice is Pure.Clean.Healthy LLC, with a principal address at 2005 Palo Verde Avenue, Suite 202, Long Beach, CA 90815, 562-844-5286. PCH identifies Michele Reynoso as a responsible individual within the entity. Michele Reynoso requests all communications be directed to PCH's attorneys.

Certificate of Merit: Pursuant to California Health & Safety Code § 25249.7(d) and California Code of Regulations, Title 11, § 3100, a Certificate of Merit is attached hereto. A second copy of this Notice and Certificate of Merit is served on the Attorney General with all supporting documentation required by California Code of Regulations, Title 11, § 3102 attached hereto.

Proposition 65: A Summary: A summary of Proposition 65 and its implementation regulations, prepared by the Office of Environmental Health Hazard Assessment ("OEHHA"), the lead agency designated under Proposition 65, is enclosed with the copy of the Notice served on the Alleged Violators.

Alleged Violation: Alleged Violators caused consumer product exposures in violation of Proposition 65 by producing or making available Super Greens Veggie Burger with broccoli, kale, white bean & spinach for distribution or sale in California to consumers, knowingly and intentionally exposing consumers to Lead without first giving a clear and reasonable warning to these individuals that they are being exposed to chemicals known to the State of California to cause cancer or reproductive toxicity.

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

Products	Violative Chemical	Alleged Violators
Super Greens Veggie Burger with broccoli, kale, white bean & spinach UPC: 850020260423	Lead	Actual Veggies, Inc., The Kroger Company dba Ralphs

The above-identified Products, recently purchased and witnessed as being available for sale or use in the State of California, are 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.

Listed Chemical: The chemical that is the subject of this Notice is Lead. Lead is known to the State of California to cause cancer. "Lead and lead compounds" have been listed as carcinogens since October 1, 1992 and "lead" has been listed as a developmental toxicant for males and females since February 27, 1987. On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

Routes of Exposure: Exposures occur when individuals, including children and women of childbearing age, eat, consume, or otherwise ingest Super Greens Veggie Burger with broccoli, kale, white bean & spinach containing Lead in accordance with the Products' reasonably foreseeable and intended uses. These exposures take place throughout the State of California.

Violations and Time Period of Exposure: Alleged Violators knowingly and intentionally exposed, and continue 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.

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 May 28, 2024. 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 Alleged Violators 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.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, PCH is interested in seeking constructive resolution of this matter.

Please direct all communication regarding this Notice to PCH's attorney, M. Uma Gopalswami (uma@torchstonelaw.com), Torch & Stone Law, APC, 4171 Ball Road, Suite 172, Cypress, CA 90630, 248-930-6180.

Sincerely,

M. Uma Gopalswami, Esq.
TORCH & STONE LAW, APC

Cc: Please see attached Certificate of Service and Distribution List.

Attachments:

1. Super Greens Veggie Burger with broccoli, kale, white bean & spinach containing Lead Certificate of Merit;
2. Appendix A: OEHHA Proposition 65: A Summary (to Alleged Violators only);
3. Confidential Factual Information Supporting Certificate of Merit (to Attorney General only); and
4. Certificate of Service and Distribution List.

Super Greens Veggie Burger with broccoli, kale, white bean & spinach containing Lead
CERTIFICATE OF MERIT
Health and Safety Code § 25249.7(d)

I, M. Uma Gopalswami, hereby declare:

1. This Certificate of Merit accompanies the attached Sixty-Day Notice in which it is alleged the parties identified in the notice have violated California Health & Safety Code section 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 expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemicals that are the subject of the notice.

4. Based on the information obtained through those 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 plaintiffs' 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. Along with a copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health and Safety Code section 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.

Date: June 21, 2024

By: 
M. Uma Gopalswami, Esq.
TORCH & STONE LAW, APC

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute OEHHA implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: http://oehha.ca.gov/prop65/law/P65law72003.html. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001. These implementing regulations are available online at: http://oehha.ca.gov/prop65/law/P65Regs.html.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Proposition 65 List." Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (http://www.oehha.ca.gov/prop65/law/index.html) to determine all applicable exemptions, the most common of which are the following:

Grace Period. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "No Significant Risk Levels" (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: http://www.oehha.ca.gov/prop65/getNSRLs.html for a list of NSRLs, and Section 25701 *et seq*. of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level" divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: http://www.oehha.ca.gov/prop65/getNSRLs.html for a list of MADLs, and Section 25801 *et seq*. of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a "significant amount" of the listed chemical entering any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" level for chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to $2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at: http://oehha.ca.gov/prop65/law/p65law72003.html.

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS:

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@oehha.ca.gov.

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

CERTIFICATE OF SERVICE

I, Ricardo Guerrero, am over the age of 18 and am not a party to this action. I am a resident of or employed in the county where the mailing occurred. My address is 11921 Colima Road, Whittier, California 90604.

On June 21, 2024, I served the following documents:

1. Sixty-Day Notice of Intent to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986;
2. Super Greens Veggie Burger with broccoli, kale, white bean & spinach containing Lead Certificate of Merit;
3. Appendix A: Office of Environmental Health Hazard Assessment California Environmental Protection Agency – The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary (to Alleged Violators only); and
4. Confidential Factual Information Supporting Certificate of Merit (to Attorney General only).

on the Alleged Violator(s) listed below via First Class Mail through the United States Postal Service by placing a true and correct copy in a sealed envelope, addressed to the entity listed below and providing such envelope to a United States Postal Service Representative:

Current President/CEO Actual Veggies, Inc. % Jason Rosenbaum 6493 Enclave Way Boca Raton, FL 33496	Current President/CEO Actual Veggies, Inc. Attn: Legal Dept. 1030 N King Rd., #207 West Hollywood, CA 90069	Current President/CEO The Kroger Company dba Ralphs c/o CSC – Lawyers Incorporating Service 2710 Gateway Oaks Dr., Suite 150N Sacramento, CA 95833

as well as by filing electronically a true and correct copy thereof as permitted through the website of the California Office of the Attorney General via link at oag.ca.gov/prop65:

State of California Department of Justice
Office of the Attorney General of California
Filing link: oag.ca.gov/prop65

Copies of the notice were provided to the public enforcers by placing a true and correct copy thereof in a sealed envelope, addressed to each of the District Attorney and City Attorney offices the parties listed on the attached Distribution List. The District Attorney and City Attorney offices that have requested electronic service only were served electronically via the email addresses listed on the Distribution List.

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

Date: June 21, 2024

Ricardo Guerrero

DISTRIBUTION LIST

Alpine County District Attorney PO Box 248 Markleeville, CA 96120	Lake County District Attorney 255 North Forbes Street Lakeport, CA 95453	Sierra County District Attorney PO Box 457 Downieville, CA 95936
Amador County District Attorney 708 Court Street, Suite 202 Jackson, CA 95642	Los Angeles County District Atty. Hall of Justice 211 W Temple St, Ste 1200 Los Angeles, CA 90012	District Attorney's Office Siskiyou County Courthouse 311 Fourth Street, Room 204 Yreka, CA 96097
Butte County District Attorney 25 County Center Drive, Suite 245 Oroville, CA 95965	Madera County District Attorney 209 West Yosemite Avenue Madera, CA 93637	Solano County District Attorney 675 Texas Street, Ste 4500 Fairfield, CA 94533
Colusa County District Attorney 310 6th Street Colusa, CA 95932	Marin County District Attorney 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	Stanislaus County District Attorney 832 12th Street, Ste 300 Modesto, CA 95354
Del Norte County District Attorney 450 H Street, Suite 171 Crescent City, CA 95531	Mendocino County District Attorney PO Box 1000 Ukiah, CA 95482	Sutter County District Attorney 446 Second Street Yuba City, CA 95991
EL Dorado County District Attorney 778 Pacific Street Placerville, CA 95667	Modoc County District Attorney 204 S Court Street, Room 202 Alturas, CA 96101-4020	Tehama County District Attorney PO Box 519 Red Bluff, CA 96080
Mono County District Attorney Post Office Box 617 Bridgeport, CA 93517	Orange County District Attorney 300 N Flower Street Santa Ana, CA 92703	Trinity County District Attorney Post Office Box 310 Weaverville, CA 96093
Glenn County District Attorney Post Office Box 430 Willows, CA 95988	San Benito County District Attorney 419 4th Street Hollister, CA 95023	Tuolumne County District Attorney 423 North Washington St. Sonora, CA 95370
Humboldt County District Attorney 825 5th Street 4th Floor Eureka, CA 95501	San Bernardino County District Attorney 316 No. Mountain View Avenue San Bernardino, CA 92415	Yuba County District Attorney 215 Fifth Street, Suite 152 Marysville, CA 95901
Imperial County District Attorney 940 West Main Street, Suite 102 El Centro, CA 92243	San Mateo County District Attorney 400 County Ctr., 3rd Floor Redwood City, CA 94063	Los Angeles City Attorney's Office City Hall East 200 N Main St, Ste 800 Los Angeles, CA 90012
Kern County District Attorney 1215 Truxtun Avenue Bakersfield, CA 93301	Shasta County District Attorney 1355 West Street Redding, CA 96001	Kings County District Attorney 1400 West Lacey Blvd. Hanford, CA 93230
Alameda County District Attorney CEPDProp65@acgov.org	Calaveras County District Attorney Prop65Env@co.calaveras.ca.us	Contra Costa County District Attorney sgrassini@contracostada.org
Inyo County District Attorney inyoda@inyocounty.us	Lassen County District Attorney mlatimer@co.lassen.ca.us	Mariposa County District Attorney mcda@mariposacounty.org
Merced County District Attorney Prop65@countyofmerced.com	Monterey County District Attorney Pro65DA@co.monterey.ca.us	Napa County District Attorney CEPD@countyofnapa.org
Nevada County District Attorney DA.Prop65@co.nevada.ca.us	Placer County District Attorney Prop65@placer.ca.gov	Plumas County District Attorney davidhollister@countyofplumas.com
Riverside County District Attorney Prop65@rivcoda.org	Sacramento County District Attorney Prop65@sacda.org	San Diego City Attorney CityAttyProp65@sandiego.gov
San Diego County District Attorney SanDiegoDAProp65@sdcda.org	San Francisco County District Attorney alexandra.grayner@sfgov.org	San Francisco City Attorney Prop65@sfcityatty.org
San Joaquin County District Attorney DA DAConsumer.Environmental@sjcda.org	San Luis Obispo County District Attorney edobroth@co.slo.ca.us	Santa Barbara County District Attorney DAProp65@co.santa-barbara.ca.us
Santa Clara County District Attorney EPU@da.sccgov.org	Santa Cruz County District Attorney Prop65DA@santacruzcounty.us	Sonoma County District Attorney jbarnes@sonoma-county.org
Tulare County District Attorney Prop65@co.tulare.ca.us	Ventura County District Attorney daspecialops@veutura.org	Yolo County District Attorney cfepd@yolocounty.org
San Jose City Attorney's Office proposition65notices@sanjoseca.gov	District Attorney Fresno consumerprotection@fresnocountyca.gov	District Attorney of Roseville pwp65@place.ca.gov