

GEHLING OSBORN LAW FIRM



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November 4, 2024

Via U.S. First Class Mail

Ralph's Grocery Company
c/o Christine S. Wheatley
1014 Vine Street
Cincinnati, Ohio 45202

William Rodney McMullen or Current President or CEO
The Kroger Co.
1014 Vine Street
Cincinnati, Ohio 45202

**Re: 60-Day Notice of Violation of California Safe Drinking
Water and Toxic Enforcement Act**

To Whom It May Concern:

This Notice of Violation (the "Notice") is provided to you pursuant to and in compliance with California Health & Safety Code § 25249.7(d).

The Gehling Osborn Law Firm ("Gehling Osborn") represents Charles Jamison, Jr. ("Mr. Jamison"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals from use of consumer products sold in California and to improve human health and the environment by reducing hazardous substances.

With respect to the Product herein, Mr. Jamison has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") codified at Cal. Health & Safety Code § 25249.5, et seq. This violation has occurred and continues to occur because the alleged Violator(s) failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in California. Health & Safety Code § 25249.6 provides that "[n]o 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 providing a clear and reasonable warning to such individual ..." Without proper warnings regarding the toxic effects of exposures to the Listed Chemical resulting from use of the Product, California citizens lack the information necessary to make informed decisions on whether and/or how to

eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.¹

I. DESCRIPTION OF THE VIOLATION

- 1. Enforcer:** Charles Jamison, Jr., 942 Ocean View Ave. CA 92024; (Ph) 619.585.8888.
- 2. Alleged Violator(s):** Manischewitz Food Products Corp., Ralphs
- 3. Time Period of Exposure:** Violations have been occurring since at least January 8, 2024 and are continuing to this day.
- 4. Listed Chemical:** Mercury is listed under Proposition 65 as a chemical known to the State to cause birth defects or other reproductive harm.
- 5. Product:**

Product²	Non- Exclusive Examples of the Product
Manischewitz Gefilte Fish in Jelled Broth	Manischewitz Gefilte Fish in Jelled Broth, 24 oz SKU 72700100079

6. Description of Exposure: The exposures that are the subject of this Notice result from the consumption and ingestion of the Product. These exposures occur through the reasonably foreseeable use of the product. The sales of this product have been occurring since at least January 8, 2024, are continuing to this day and will continue to occur as long as the product subject to this notice is sold to and used by consumers. No clear and reasonable warning is provided with the Products regarding the health hazards of exposure to the Listed Chemical.

II. PROPOSITION 65 INFORMATION

For the Violators' reference, enclosed is a copy of "Proposition 65: A Summary" that has been prepared by the Office of Environmental Health Hazard Assessment

¹ The public enforcement agencies that have been served with copies of this Notice are identified in the attached Distribution List.

² The specifically identified example of the Product in this Notice is to assist the recipients' investigation of, among other things, the magnitude of potential exposures to the Listed Chemical from other items within the definition of Products. This example is not intended to be an exhaustive or comprehensive identification of each specific offending Product. It is Mr. Jamison's position that the alleged Violators are obligated to conduct a good faith investigation into other Products that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violators' custody or control) during the relevant period to ensure that requisite health hazard warnings were and are provided to California citizens prior to purchase and use.

("OEHHA"). For more information concerning the provisions of Proposition 65, contact OEHHA at 916.445.6900.

III. RESOLUTION OF THE CLAIMS

Based on the allegations set forth in this Notice, Gehling Osborn intends to file a citizen enforcement lawsuit on behalf of Mr. Jamison against the alleged Violator(s) unless such Violator(s) agree in a binding written agreement to: (1) recall Products already sold; (2) provide Proposition 65 compliant exposure warnings for Products sold in the future or reformulate the Products to eliminate exposures to the Listed Chemical; and (3) pay an appropriate civil penalty based on the factors enumerated in Health and Safety Code section 25249.7(b). Consistent with the public interest goals of Proposition 65 and the desire to have these violations of California law quickly rectified, Mr. Jamison is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation. Mr. Jamison has retained the undersigned as legal counsel in connection with this Notice. Please direct all communications regarding this Notice to my attention at 600 4th Street, Suite 900, Sioux City, Iowa 51101; 712.226.4602; anthony@golawfirm.com.

Sincerely,



Anthony L. Osborn
Attorney for Charles Jamison, Jr.

Attachments:

Certificate of Merit

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A
Summary

Distribution List

cc: Ralph's Grocery Company
c/o CSC Lawyers Incorporating Service
2710 Gateway Oaks Drive
Sacramento, California 95833

The Kroger Co.
c/o Corporation Service Company
3366 Riverside Drive, Suite 103
Upper Arlington, Ohio 43221

The Kroger Co.
c/o CSC – Lawyers Incorporating Service
2710 Gateway Oaks Drive
Sacramento, California 95833

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct: I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within action. My business address is 600 4th Street, Suite 900, Sioux City, Iowa 51101. I am employed in Woodbury County, Iowa where the mailing occurred. On November 4, 2024, I served the following documents: Notice of Violation of California Health & Safety Code §25249.5, et seq.; Certificate of Merit; The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary on the following entities and individuals listed below by placing a true and correct copy thereof in a sealed envelope, addressed to the person or entity listed below and depositing it in a US Postal Service Office with postage fully prepaid for delivery by First Class Mail:

Current Chief Executive Officer
Ralph's Grocery Company
c/o Christine S. Wheatley
1014 Vine Street
Cincinnati, Ohio 45202

Ralph's Grocery Company
c/o CSC Lawyers Incorporating Service
2710 Gateway Oaks Drive
Sacramento, California 95833

William Rodney McMullen, Current President or CEO
The Kroger Co.
1014 Vine Street
Cincinnati, Ohio 45202

William Rodney McMullen, Current President or CEO
The Kroger Co. c/o Corporation Service Company
3366 Riverside Drive, Suite 103
Upper Arlington, Ohio 43221

The Kroger Co.
c/o CSC – Lawyers Incorporating Service
2710 Gateway Oaks Drive
Sacramento, California 95833

On November 4, 2024, I served the following documents: Notice of Violation of California Health & Safety Code §25249.5, et seq.; Certificate of Merit; The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary on each of the individuals on the Distribution List attached hereto by email as indicated (if applicable) and/or by placing a true and correct copy thereof in a sealed envelope, addressed to the person or entity listed below and depositing it in a US Postal Service Office with postage fully prepaid for delivery by First Class Mail.

Executed on November 4, 2024, in Sioux City, Iowa



Nikki Britton

Manischewitz Gefilte Fish in Jelled Broth

CERTIFICATE OF MERIT

Health & Safety Code Section 25249.7(d)

I, Anthony Osborn, hereby declare as follows subject to penalty of perjury:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the party(s) identified in the notice(s) has/have violated Health and 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 at least one person with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the action.

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. 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 Health and Safety Code section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certified, and (2) the facts, studies, or other data reviewed by those persons.

Dated: November 4, 2024

By: _____



Anthony L. Osborn

Attorney for Charles Jamison, Jr.

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. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and 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 27001.¹ 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 say 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 Periods. 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 contaminant² 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.

Revised: May 2017

¹ All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

² See Section 25501(a)(4).

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.

Distribution List

Alpine County District Attorney PO Box 248 Markleeville, CA 96120	Los Angeles City Attorney 211 W. Temple Street, Suite 1200 Los Angeles, CA 90012	Solano County District Attorney 675 Texas Street, Suite 4500 Fairfield, CA 94533
Amador County District Attorney 708 Court, Suite 202 Jackson, CA 95642	Lake County District Attorney 255 N Forbes St Lakeport, CA 95453-4790	Shasta County District Attorney 1355 West Street Redding, CA 96001
Butte County District Attorney 25 County Center Dr. Oroville, CA 95965-3385	Madera County District Attorney 300 S. G Street, Suite 300 Madera, CA 93637	Sierra County District Attorney 100 Courthouse Square Downieville, CA 95936
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Kern County District Attorney 1215 Truxtun Ave. Bakersfield, CA 93301	San Benito County District Attorney 419 4th St Hollister, CA 95023	
Kings County District Attorney 1400 West Lacey Blvd. Hanford, CA 93230	San Bernardino County District Attorney 303 W 3rd St San Bernardino, CA 92415	
Los Angeles County District Attorney 210 W Temple St, 18th Floor Los Angeles, CA 90012	Siskiyou County District Attorney PO Box 986 Yreka, CA 96097	

Electronic Service:

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Monterey County District Attorney Prop65DA@co.monterey.ca.us	Inyo County District Attorney inyoda@inyocounty.us	Lassen County Program Coordinator dhandler@co.lassen.ca.us
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Fresno County District Attorney consumerprotection@fresnocountyca.gov	San Diego District Attorney SanDiegoDAProp65@sdcca.org	San Mateo County District Attorney PROP65@smcgv.org
El Dorado County District Attorney EDCDAPROP65@edcda.us	Marin County District Attorney consumer@marincounty.org	