

November 20, 2024

**NOTICE OF VIOLATION OF CALIFORNIA
HEALTH AND SAFETY CODE SECTION 25249.6
(Proposition 65)**

Sent by USPS Postage Fully Prepaid

Kiva Manufacturing, Inc.
c/o CSC - LAWYERS INCORPORATING SERVICE
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

We represent the Valentino McCoy-Garcia, a resident of California (the “Claimant”), acting in the interest of the general public. This letter serves as notice that Kiva Manufacturing, Inc. (“Violator”) is in violation of “Proposition 65,” which is otherwise known as the Safe Drinking Water and Toxic Enforcement Act of 1986 and is codified at California Health & Safety Code section 25249.5 *et seq.* Specifically, this notice is being sent in regard to a violation of section 25249.6, which 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 giving clear and reasonable warning to such individual”.

The Claimant has identified that the Violator has violated (and continues to violate) section 25249.6 by exposing consumers within the State of California to the chemical(s) listed below (which are present at unsafe levels in the products listed below) without providing proper warnings about exposure to those chemical(s) or the toxic effects of exposure to those chemical(s), which are known to the state to cause cancer or reproductive toxicity.

This letter serves as notice to both the Violator and the appropriate public enforcement agencies that the Claimant intends to file a private enforcement action, pursuant to section 25249.7(d) 60 days after effective service of this notice (the “Notice”) unless the public enforcement agencies have commenced and are earnestly prosecuting an action in regard to the violation alleged herein.

Violator:

Kiva Manufacturing, Inc.
2300 North Loop Road
Alameda, CA 94502

Violation:

The Violator knowingly and intentionally exposed and continues to expose consumers within the State of California to the chemicals listed below without providing clear and reasonable warning of the exposure while employing more than 9 employees.¹

Consumer Product(s) in Violation of 25249.6 (the “Products”):

This notice pertains to cannabis-infused edibles, including but not limited to gummies and other

¹ Employees of the Violator include all persons who are employees of the organization under 27 Cal. Code Regs. § 25102(h), which includes the officers of the organization and all members of the organization who are compensated, directly or indirectly, for their services to the organization—including, without limitation, any member compensated for cultivating, purchasing, possessing, transporting or distributing medical cannabis.

confectionery products containing THC (Δ^9 -Tetrahydrocannabinol). The products covered by this notice encompass all similar items sold by the Violator that expose consumers to THC without providing clear and reasonable warnings as required under Proposition 65.

Listed Chemical(s):

- THC (Δ^9 -Tetrahydrocannabinol or Delta-9-Tetrahydrocannabinol)

Route of Exposure:

Each of the products is a marijuana product, designed to be consumed recreationally or for relief from issues such as stress, pain, or discomfort. The primary routes of exposure to the chemicals in these gummies is ingestion. While consumers may believe these products are safe and healthy, they actually contain unsafe levels of chemicals that the state has identified as dangerous.

Number and Duration of Violations

Each and every instance where a Product is offered for sale to a customer within the State of California without an appropriate clear and reasonable warning, in the format required by California statute and regulations, constitutes a separate violation of Proposition 65. This includes transactions made in-person, via catalog, over the phone, and over the internet by the recipients of this Notice as well as by any other sellers of the Products. Please note that the Products specifically identified in this Notice are not an exhaustive list of products that violate Proposition 65 and for which a penalty may apply.

Approximate Time of Violations:

The violations in this case are ongoing and will continue to occur until the Products are no longer sold to customers within California, or are sold with appropriate warnings. These violations have been occurring since at least September 20, 2024, as well as every day since the Products were introduced into commerce within California.

Resolution of Noticed Claims

Based on the information contained herein and in the Certificate of Merit provided to the Attorney General, we intend to file a citizen enforcement action on behalf of the Claimant against Violator sixty (60) days after effective service of this Notice unless the relevant public enforcement agencies have commenced and are earnestly prosecuting an action against Violator to redress the violations discussed in this Notice; or, unless Violator enters into a binding written agreement that addresses said violations by either recalling any Products which have already been sold or taking steps to provide warnings to consumers who have purchased the Products, adding the appropriate warning to Products that will be sold in the future, and paying an appropriate civil penalty.

If Violator desires to resolve this dispute without resorting to costly and time-consuming litigation, I welcome the opportunity to discuss a potential settlement that serves the public's interest in preventing exposure to toxic chemicals. Please direct all such communications to my office at the address below. Settlements can be finalized once the 60-day notice period has elapsed.

Preservation of Evidence

This Notice serves as a respectful demand to preserve and maintain all relevant evidence pending resolution of this matter. Such relevant evidence includes but is not limited to any information relating to the presence or potential presence of the Listed Chemicals in the Products (such as Certificates of Analysis (COAs) and other laboratory test results); purchase and sales information for any of the Products sold within California; any efforts to comply with Proposition 65 with respect to the Products; communications relating to the presence or potential presence of

the Listed Chemicals in Products (such as statements on Violator's packaging or website); and representative exemplars of each specific product falling within the Products.

This demand applies to all relevant evidence for Products sold in the State of California, as far back as when the Products were first produced or sold by Violator, through the date of the resolution of the claims alleged in this Notice.

Responsibility to Provide Consumer Product Exposure Warnings

In accordance with Title 27, Cal. Code of Regs. Section 25600.2(g), please promptly answer the questions on Exhibit B, and return with receipt confirmation to the mailing and/or email address listed below within fifteen (15) calendar days of receipt of this letter.

Contact Information:

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

Robinson Zermay LLP
777 S. Alameda St., 2nd Floor
Los Angeles, CA 90021
ak@robinsonzermay.com
269.470.5916

Dated: November 18, 2024



Alexander K. Robinson
Robinson Zermay LLP
777 S. Alameda St. 2nd Floor
Los Angeles, CA 90021
ak@robinsonzermay.com
269.470.5916
Counsel for the Claimant

Attachments:

- A. The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary
- B. Questions related to Title 27, Cal. Code of Regs. Section 25600.2(g).
- C. Certificate of Merit
- D. Additional Supporting Documentation (to AG only)
- E. Proof of Service

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 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

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>.

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 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.

² See Section 25501(a)(4).

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

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.

EXHIBIT B

As it relates to each of the Products, including but not limited to those identified on the Notice, provide the full legal entity name and any known contact information for:

1. Any and all manufacturers
2. Any and all producers
3. Any and all packagers
4. Any and all direct vendors
5. Any and all exporters
6. Any and all shippers
7. Any and all distributors
8. Any and all sellers

Please send the above-requested information to Robinson Zermay LLP within fifteen (15) calendar days of receipt of this Notice to the mailing and/or email address listed in the Notice. Thank you for your anticipated cooperation.

CERTIFICATE OF MERIT

I, Alexander K. Robinson, hereby declare:

1. This Certificate of Merit accompanies the 60-day notice in which it is alleged that the parties identified in the notice have violated Health and Safety Code section 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 has reviewed facts, studies, or other data regarding the alleged 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 certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: November 18, 2024



Alexander K. Robinson
Robinson Zermay LLP
777 S. Alameda St. 2nd Floor
Los Angeles, CA 90021
ak@robinsonzermay.com
269.470.5916

Counsel for the Claimant

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, and am not a party to the within entitled action. My business address is 777 S. Alameda St., 2nd Floor, Los Angeles, CA 90021. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail in Los Angeles, California.

On November 18, 2024, I served the following documents: **Notice of Violation of California Health and Safety Code Section 25249.6 (Proposition 65); Certificate of Merit; “The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below, and depositing it at the U.S. Postal Service Office with the postage fully prepaid for delivery by USPS First Class Certified Mail:

Kiva Manufacturing, Inc.
c/o CSC - LAWYERS INCORPORATING SERVICE
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

On November 18, 2024, I verified that the following documents: **Notice of Violation of California Health and Safety Code Section 25249.6 (Proposition 65); Certificate of Merit; Additional supporting documents as required by California Health and Safety Code § 25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice>:

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Oakland, CA 94612-0550

On November 18, 2024, I served the following documents: **Notice of Violation of California Health and Safety Code Section 25249.6 (Proposition 65); Certificate of Merit** on each of the parties on the Service List attached below 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 the U.S. Postal Service Office with the postage fully prepaid. for delivery by USPS First Class Certified Mail.

Executed on November 18, 2024 in Los Angeles, California.



Alexander K. Robinson

Service List

**Los Angeles County District Attorney
211 W Temple St, Suite 1200
Los Angeles, CA 90012**

**Office of the City Attorney
200 N Main St. #800
Los Angeles, CA 90012
(213) 978-8100**