

# SIXTY-DAY NOTICE OF VIOLATION

SENT IN COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)

**DATE:** January 24, 2025

**TO:** W. Rodeny McMullen, CEO – The Kroger Co.  
California Attorney General’s Office  
District Attorneys and Certain City Attorneys Throughout California

**FROM:** Jay Epps

My name is Jay Epps. I am a citizen of the State of California acting in furtherance of the public interest. I seek to promote awareness of exposures to certain toxic chemicals in products sold in California and, if possible, to improve human health by reducing hazardous substances contained in such items. 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, this letter is also being provided to the alleged violator, The Kroger Co. (in its role as an online retailer), which is a person in the course of doing business in California (Violator). The violations covered by this notice consist of the product exposure, routes of exposure and type of harm potentially resulting from exposure to the hazardous substance identified below (listed chemical), as follows:

Products:	Moth Balls (Manufactured by Willert Home Products and/or Branded Under The “Enoz” Name)
Listed Chemical:	Naphthalene
Routes of Exposure:	Inhalation, Ingestion and Dermal
Types of Harm:	Cancer

## **I. NATURE OF ALLEGED VIOLATION (CONSUMER PRODUCT EXPOSURE)**

The specific type of product that is causing consumer exposures and potentially occupational exposures in violation of Proposition 65, and that is covered by this letter shall be referred to hereinafter as the “Products.” Exposures to the listed chemical from the use of the Products have been occurring without the “clear and reasonable warning” required by Proposition 65, dating as far back as January 24, 2021. Without proper warnings regarding the toxic effects of exposures to the listed chemical resulting from the use of 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 listed chemical from the reasonably foreseeable use of the Products.

California citizens, through the act of buying, acquiring, receiving or utilizing the Products, are exposed to the listed chemical. By way of example, consumers and other individuals ingest the listed chemical when they, among other activities, touch the Products and transfer the listed chemical from the Products to their mouths through hand-to-mouth activities that may continue to occur for a significant period after one or more contacts with the Products ceases.

Additionally, consumers, workers and other individuals are exposed to the listed chemical through direct dermal contact when they, among other activities, handle, touch or otherwise use the Products. Further, there are reasonably foreseeable uses of the Products that result in direct ingestion and significant amounts of inhalation exposure to the listed chemical.

The California State Plan for Occupational Safety and Health incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997. This approval specifically placed certain conditions with regard to occupational exposures on Proposition 65, including that it does not apply to the conduct of manufacturers, by which the Products are branded (e.g., manufacturer's name appears on Product label), occurring outside the State of California so long as the named manufacturer is in the United States. The approval also provides that a United States employer may use the means of compliance in the general hazard communication requirements to comply with Proposition 65. It also requires that supplemental enforcement be subject to the supervision of the California Occupational Safety and Health Administration.

Any settlement, civil complaint or substantive court orders in this matter must be submitted to the state Attorney General. It is important to note that the sale of the Products through online means of transaction must provide the customer with a clear and reasonable warning for the risk of cancer pursuant to Proposition 65 and its implementing regulations, even if the violator's role is limited that of an online retail seller.

## **II. CONTACT INFORMATION**

Please direct all questions concerning this notice to me through my counsel at the following address, email and/or telephone number:<sup>1</sup>

Jay Epps  
c/o Clifford A. Chanler  
Chanler, LLC  
72 Huckleberry Hill Road  
New Canaan, CT 06840-3801  
Telephone: (475) 277-2932  
clifford@chanlerllc.com

Jay Epps  
c/o Steven Y. Chen  
Steven Y. Chen, APLC  
2650 River Avenue, Unit A  
Rosemead, California 91770  
Telephone: (626) 782-5017  
schen@schenlaw.com

## **III. 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 each Violator's reference, I have attached a copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary" which has been prepared by OEHHA.

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<sup>1</sup> Should your attempt to contact me through my counsel be unsuccessful, I can be reached by mail at 1010 Liberty Drive, Suisun, CA 94585, or by phone at (415) 849-6181.

#### **IV. POTENTIAL RESOLUTION OF NOTICED CLAIMS**

Based on the assertions set forth in this notice, I intend to file a citizen enforcement action against the Violator unless such alleged person in the course of doing business enter into a binding written agreement (and/or upstream party such as a supplier enters into an agreement which would resolve one or more of the Products at issue shipped to the Violator) to: (a) recall Products already sold; (b) provide “clear and reasonable warnings” for Products to be sold online in the future or, preferably, reformulate such Products to eliminate the Naphthalene exposures (or undertake best efforts to ensure upstream selling entities in the chain of commerce such as manufacturers, exporters, importers or distributors do so); and (c) pay an appropriate civil fine, if any, based on the factors enumerated in California Health & Safety Code §25249.7(b). If the alleged Violator is particularly interested in resolving this dispute without resorting to litigation, please feel free to contact my counsel identified in Section II above. It should be noted that neither my counsel nor I can finalize any settlement with any Violator until after the statutory sixty-day notice period has expired for the covered Products; nor speak for the state Attorney General, any state district attorney or the city attorneys who received this notice.

#### **V. ADDITIONAL NOTICE INFORMATION**

An example of Products that was recently purchased and remain available for purchase or use in California that is within the Product category covered by this notice is identified on Exhibit A. I allege that the sale of the offending Products has also occurred without the requisite Proposition 65 “clear and reasonable warning.”<sup>2</sup>

The example on the attachment 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 definition of Products. This example is not meant to be an exhaustive list of each specific offending Product. Further, the alleged Violator is 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, imported, distributed, facilitated for sale, sold, shipped, stored, or was otherwise within the notice recipient’s custody or control during the relevant period so as to ensure that the requisite toxic warnings were and continue to be provided to California citizens prior to purchase, especially if the upstream vendor (i.e., party with whom the Violator entered into a contract to sell the Products at issue) is exempt from a duty to warn or enforcement under Proposition 65.

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<sup>2</sup> In accordance with 27 CCR §25600.2(g), please “promptly” answer the questions on **Exhibit B**, and return with receipt confirmation to Jay Epps c/o Clifford Chanler, Chanler, LLC, 72 Huckleberry Hill Road, New Canaan, CT 06840, or via email to [clifford@chanlerllc.com](mailto:clifford@chanlerllc.com).

## Exhibit A

<i>Product Exemplar</i>	<i>UPC</i>
Enoz Old Fashioned Moth Balls	070922042815

## Exhibit B

As it relates to *each* of the Products, including the one identified on **Exhibit A**, provide the full legal entity name and any known contact information for:

- (a) Any and all producers
- (b) Any and all packagers
- (c) Any and all direct vendors; and
- (d) Any and all sellers

Please email (or send via overnight delivery) the above-requested information to the address provided in Section II. Thank you.

# PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury:

I am over the age of 18 years and not a party to the within action. I am a resident or employed in the county where the mailing occurred. My business address is 72 Huckleberry Hill Road, New Canaan, CT 06840.

On **January 27, 2025**, I caused to be served the following documents:

**SIXTY-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH  
HEALTH & SAFETY CODE § 25249.7(d);**

**CERTIFICATE OF MERIT; AND**

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

XXXX **By First Class Certified Mail** through the United States Postal Service by placing true and correct copies of the above documents in a sealed envelope, addressed to each alleged violator listed below and providing such envelope to a United States Postal Service Representative.

W. Rodney McMullen, CEO  
The Kroger Co.  
1014 Vine Street, Suite 1000  
Cincinnati, OH 45202-1100

On **January 27, 2025**, I caused to be served the following documents:

**SIXTY-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH  
HEALTH & SAFETY CODE § 25249.7(d); AND**

**CERTIFICATE OF MERIT**

XXXX **By Electronic Mail** by sending true and correct copies of the above documents to the electronic notification (Email) address(es) on the attached "Email Service List."

On **January 27, 2025**, I caused to be served the following documents:


**SIXTY-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH  
HEALTH & SAFETY CODE § 25249.7(d);**

**CERTIFICATE OF MERIT; AND**

**CERTIFICATE OF MERIT ATTACHMENTS**

XXXX **By Electronic Upload** by causing true and correct copies of the above documents to be uploaded to the California Attorney General's website at the web address on the attached "Electronic Upload Service List."

Executed on **January 27, 2025**, in New Canaan, Connecticut.

  
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Lorent Guimaraes

# CERTIFICATE OF MERIT

California Health & Safety Code Section 25249.7(d)

I, Clifford A. Chanler, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the party identified in the notice has violated Health and 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 expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the subject of this action and/or the listed chemical in substantially similar products and exposes individuals through the same potential routes;
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 plaintiff’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 under Health and Safety Code §25249.7(h)(2) including (i) the identity of the persons consulted with and relied on by the certifier, and (ii) certain facts, studies, or other data reviewed by those persons.

Dated: January 24, 2025



Clifford A. Chanler

# EMAIL SERVICE LIST

The Honorable Todd Riebe  
Amador County District Attorney  
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Jackson, CA 95642  
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The Honorable Michael Ramsey  
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SolanoDA@solanocounty.com



# **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>