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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA**

DAVID STEINMAN and THE CHEMICAL
TOXIN WORKING GROUP, INC., a California
non-profit corporation,

Plaintiffs,

vs.

THE KROGER CO. and DOES 1-100,

Defendants.

Case No. JCCP 4779

**[PROPOSED] STIPULATED CONSENT
JUDGMENT; [PROPOSED] ORDER
RE: THE KROGER CO.**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: June 28, 2012

Trial Date: Not Set

2. INTRODUCTION

1.1 On June 28, 2012, Plaintiff David Steinman ("Steinman"), as a private enforcer,

1 and in the public interest, initiated this Action by filing a Complaint for Injunctive and
2 Declaratory Relief and Civil Penalties (the “Complaint”) pursuant to the provisions of
3 California Health and Safety Code section 25249.5 et seq. (“Proposition 65”), The Kroger Co.
4 (“Kroger”). On October 29, 2013, David Steinman filed a First Amended Complaint
5 (“Amended Complaint”), adding Plaintiff The Chemical Toxin Working Group (“CTWG”) to
6 this Action. David Steinman and CTWG shall be collectively referred to as Plaintiffs.
7 Plaintiffs and Defendant shall collectively be referred to as the “Parties,” each a “Party.”

8 **1.2** In this Action, Plaintiffs allege that certain products distributed by Kroger to the
9 general public contain lead, a chemical listed pursuant to Proposition 65 as a carcinogen and
10 reproductive toxicant, and that these products expose consumers at levels requiring a Proposition
11 65 warning. The following products are subject to the terms of this Consent Judgment and
12 hereinafter shall be referred to as “the Covered Products”: Ralphs Premium Quality Whole
13 Oysters in Water, Ralphs Mandarin Oranges, Peeled Segments in Light Syrup, Ralphs Premium
14 Quality Smoked Oysters in Cottonseed Oil, and Ralphs Lite Mandarin Oranges, Peeled Segments
15 in Mandarin Orange Juice.

16 **1.3** Plaintiff David Steinman is an individual and founder of plaintiff CTWG, a California
17 non-profit corporation. Plaintiffs are private enforcers of Proposition 65, acting in the public
18 interest, that have diligently prosecuted this matter and are settling the case in the public interest.

19 **1.4** Defendant The Kroger Co. is a business entity that at all times relevant for
20 purposes of this Consent Judgment employs ten or more persons.

21 **1.5** The Complaint was based on allegations of lead exposure to consumers as set
22 forth in David Steinman’s Notices of Violation dated January 5, 2012 and February 24, 2012
23 served on the Attorney General of the State of California, other public enforcers and Kroger in
24 regard to the Covered Products Ralphs Premium Quality Whole Oysters in Water, Ralphs
25 Mandarin Oranges, Peeled Segments in Light Syrup and Ralphs Premium Quality Smoked
26 Oysters. The First Amended Complaint added allegations of lead exposure to consumers as set
27 forth in CTWG’s Notice of Violation dated February 20, 2013 in regard to the Covered Product
28

1 Ralphs Lite Mandarin Oranges, Peeled Segments in Mandarin Orange Juice. A true and correct
2 copy of the Notices of Violation is attached as Exhibit A. More than sixty (60) days have
3 passed since the Notices of Violation were mailed, and no designated governmental entity has
4 filed a complaint against Kroger with regard to the Covered Products or the alleged violations.

5 **1.6** Plaintiffs' Notices of Violation and the First Amended Complaint allege that use
6 of the Covered Products expose persons in California to Proposition 65 listed chemicals
7 without first providing clear and reasonable warnings in violation of California Health and
8 Safety Code section 25249.6. Kroger denies all material allegations contained in the Notices of
9 Violation and First Amended Complaint and specifically denies that it violated Proposition 65
10 or that the Covered Products require or required a Proposition 65 warning or otherwise caused
11 harm to any person. Nothing in the Consent Judgment shall be construed as an admission by
12 Kroger of any fact, issue of law or violation of law, nor shall compliance with the Consent
13 Judgment constitute or be construed as an admission by Kroger of any fact, issue of law or
14 violation of law, at any time, for any purpose. Nothing in the Consent Judgment shall
15 prejudice, waive or impair any right, remedy, argument or defense that Kroger may have in
16 other or further legal proceedings.
17

18 **1.7** The Parties have entered into this Consent Judgment in order to settle,
19 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.
20 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of
21 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,
22 parent companies, subsidiaries, divisions, affiliates, franchises, licensees, customers, suppliers,
23 distributors, wholesalers, or retailers of any fact, conclusion of law, issue of law, violation of
24 law, fault, wrongdoing, or liability, including without limitation, any admission concerning any
25 alleged violation of Proposition 65 or any other law or legal duty.

26 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
27 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
28 other or future legal proceeding unrelated to these proceedings.

1 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as
2 a Judgment by this Court.

3 **2. JURISDICTION AND VENUE**

4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
5 jurisdiction over the allegations of violations contained in the First Amended Complaint and
6 personal jurisdiction over Kroger as to the acts alleged in the First Amended Complaint, that
7 venue is proper in Alameda, and that this Court has jurisdiction to enter this Consent Judgment as
8 a full and final resolution of all claims which were or could have been asserted in his action based
9 on the facts alleged in the Notices of Violation and the First Amended Complaint.

10 **3. INJUNCTIVE RELIEF, WARNINGS AND TESTING**

11 **3.1** Subject to the provisions set forth in Section 3.5 below, Kroger shall not
12 manufacture for sale in the State of California, distribute into the State of California, or directly
13 sell in the State of California, any Covered Products unless each such unit of the Covered
14 Product (1) meets the warning requirements under Section 3.2, or (2) qualifies as a
15 “Reformulated Covered Product” under Section 3.3.
16

17 **3.1.5** As used in this Consent Judgment, the term “distribute into the State of
18 California” shall mean Kroger directly ships a Covered Product into California for sale in
19 California or sells a Covered Product to a distributor or retailer that Kroger knows will sell the
20 Covered Product in California.

21 **3.2 Clear and Reasonable Warnings**

22 If Kroger provides a warning for Covered Products pursuant to Section 3.1(1) then Kroger
23 shall provide the following warnings:

24 [California Proposition 65] **WARNING: THIS PRODUCT CONTAINS LEAD, A**
25 **CHEMICAL KNOWN TO THE STATE OF CALIFORNIA TO CAUSE [CANCER**
26 **AND] BIRTH DEFECTS OR OTHER REPRODUCTIVE HARM.**

27 [California Propuesta 65] **ATENCION. LAS LATAS DE ESTE PRODUCTO**
28 **CONTIENEN PLOMO, UN OUIMICO QUE HA SIDO RECONOCIDO POR EL**

1 **ESTADO DE CALIFORNIA DE CAUSA [EL CANCER], DEFECTOS DE**
2 **NACIMIENTO, DEFECTOS CONGENITOS Y OTROS DAÑOS**
3 **REPRODUCTIVOS.**

4 The word “cancer” shall be used in the warnings above only if the average daily exposure
5 level exceeds 15 micrograms of lead as determined pursuant to the provisions set forth in Section
6 3.3 and 3.4. The words “California Proposition 65” may be included at Kroger’s option. No
7 additional language about Proposition 65 or lead may accompany the Proposition 65 warning.
8 Kroger shall provide the applicable warning by either or both of the following methods:

9 1) On the label of the can or container (other than on the underside or bottom of the
10 can or; and/or container) of each individual unit of a Covered Product sold or distributed to
11 retail stores in California and on those Covered Products shipped to California consumers.
12 If the warning is provided pursuant to this method, it shall be provided in English. Kroger,
13 may, but is not required to include the Spanish warning on this method of warning.

14 2) On a warning sign at least 2” x 4” or substantially the equivalent size and displayed
15 in the area(s) where the Covered Products are located for sale with such conspicuousness
16 and compared so as to render it likely to be read and understood by an ordinary individual
17 under customary conditions of purchase of such Covered Products. If the warning is
18 provided pursuant to this method, it shall be provided in both English and Spanish.

19 Kroger must display the above warnings with such conspicuousness, as compared with
20 other words, statements, or design of the label, can, container, and shelf
21 warning to render the warning likely to be read and understood by an ordinary individual under
22 customary conditions of purchase or use of the Covered Product. Each letter in the word
23 “**WARNING**” must be in all capital letters and bold print.

24 **3.3 Calculation of Lead Levels; Reformulated Covered Products**

25 A Reformulated Covered Product is one for which the average daily exposure level does not
26 exceed 0.5 micrograms of lead per day (for Covered Products) as determined by the formula,
27 testing and quality control methodology described in Section 3.4. As used in this Consent
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1 Judgment, “no more than 0.5 micrograms of lead per day” mean that the samples of the testing
2 under Section 3.4 yield an average daily exposure of no more than 0.5 micrograms of lead for
3 Covered Products (with average daily exposure calculated pursuant to Section 3.4 of this Consent
4 Judgment). For Covered Products that cause exposures in excess of 0.5 micrograms of lead per
5 day, Kroger shall provide the warning set forth in Section 3.2. For purposes of determining which
6 warning, if any, is required pursuant to Section 3.2, the average concentration utilizing the
7 geometric mean of lead detection results of five (5) samples of the Covered Products, randomly
8 selected by Kroger, will be controlling.

9 **3.3 Formula, Testing and Quality Control Methodology**

10 **3.4.1** For purposes of this Consent Judgment, average daily exposure
11 levels shall be measured in micrograms per day, and shall be calculated using the following
12 formula: the average concentration of lead in the product in micrograms per gram, multiplied
13 by grams of product per serving of the product (using the serving size appearing on the product
14 label), multiplied by frequency of consumption of once every fourteen (14) days.

15 **3.4.2** Kroger shall not be required to engage in testing pursuant to this Consent
16 Judgment unless Kroger determines that it will manufacture for sale in the State of California,
17 distribute into the State of California, or directly sell in the State of California any
18 Reformulated Covered Products without a warning. All testing pursuant to this Consent
19 Judgment shall be performed using a laboratory method that complies with the performance
20 and quality control factors appropriate for the method used, including limit of detection, limit
21 of quantitation, accuracy, and precision and meets the following criteria: Inductively Coupled
22 Plasma-Mass Spectrometry (ICP-MS) achieving a limit of quantitation of less than or equal to
23 0.010 mg/kg or any other testing method subsequently agreed upon in writing by the Parties.

24 **3.4.3** All testing pursuant to this Consent Judgment shall be performed
25 by an independent third-party laboratory certified by the California Environmental Laboratory
26 Accreditation Program for the analysis of heavy metals or a laboratory that is approved by,
27 accredited by, or registered with the United States Food & Drug Administration. If Kroger
28

1 determines that it will manufacture for sale in the State of California, distribute into the State of
2 California, or directly sell in the State of California any of the Reformulated Covered Products
3 without a warning in the future, Kroger shall provide written notice to Plaintiffs of its intent to
4 conduct such sales at least one hundred twenty (120) days prior to recommencement of such
5 sales. Testing shall continue for at least four (4) consecutive years from date of
6 recommencement of such sales and at least once per year, for the lead testing of five (5)
7 randomly-selected samples of each Reformulated Covered Product in the form intended for sale
8 to the end-user to be distributed or sold in California. If tests conducted pursuant to this
9 Section demonstrate that no warning is required for a Reformulated Covered Product during
10 each of four (4) consecutive years, then the testing requirements of this Section will no longer
11 be required as to that Reformulated Covered Product. However, if after the four-year period,
12 Kroger changes suppliers for any of the Reformulated Covered Products and/or reformulates
13 any of the Reformulated Covered Products, then Kroger shall test that Reformulated Covered
14 Product at least once after such change is made, and send those test results to Plaintiffs within
15 ten (10) court days of receiving the test results. If Kroger ceases the manufacture for sale in the
16 State of California, the distribution into the State of California, or the direct sale in the State of
17 California of any Reformulated Covered Products under this Section 3.4.3, Kroger shall not be
18 required to engage in further testing pursuant to this Consent Judgment.
19

20 **3.4.4** If Kroger determines that it will manufacture for sale in the State of
21 California, distribute into the State of California, or directly sell in the State of California any
22 of the Reformulated Covered Products without a warning, Kroger shall provide to Plaintiffs
23 copies of all laboratory reports with results of testing for lead (for the Covered Products)
24 performed under this Section no later than ninety (90) days prior to sales of the Reformulated
25 Covered Product. For a period of four (4) years thereafter, Kroger shall arrange annually for
26 copies of all laboratory reports with results of testing for lead content under and for the purpose
27 of Section 3 of this Consent Judgment to be sent to Plaintiffs upon request within fifteen (15)
28 court days of such request. Kroger shall retain all test results and documentation for a period of

1 four (4) years from the date of each test. These reports shall be treated by Plaintiffs as
2 confidential information under the terms of the confidentiality agreement entered into by the
3 Parties.

4 **4. SETTLEMENT PAYMENT**

5 **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil
6 penalties, attorney's fees and costs in connection with claims regarding the Covered Products,
7 Kroger shall make a total payment of \$157,750.00 within ten (10) business days of receiving
8 the Notice of Entry of Judgment. Said payment shall be made by checks apportioned as
9 follows:

10 **4.2** \$21,144.00 shall be payable as civil penalties pursuant to California Health and
11 Safety Code section 25249.7(b)(1). Of this amount, \$15,858.00 shall be payable to the Office
12 of Environmental Health Hazard Assessment ("OEHHA") and \$5,286.00 shall be payable to
13 The Chemical Toxin Working Group, Inc., pursuant to California Health and Safety Code
14 section 25249.12(c)(1) & (d). Kroger shall send both civil penalty payments to Plaintiffs'
15 counsel who will be responsible for forwarding the civil penalty to OEHHA along with a copy
16 of the transmittal letter to Kroger's counsel.

17 **4.3** \$6,178.00 shall be payable to The Chemical Toxin Working Group, Inc. as
18 reimbursement to CTWG for (A) reasonable costs and expenses associated with the
19 enforcement of Proposition 65 and other costs incurred as a result of Plaintiffs' work in
20 bringing this action; and (B) \$90,756.00 shall be payable to The Chemical Toxin Working
21 Group, Inc. in lieu of further civil penalties, for day-to-day business activities such as continued
22 enforcement of Proposition 65, which includes work analyzing, researching and testing food
23 and other consumer products that may contain Proposition 65 chemicals.

24 **4.4** \$36,602.00 shall be payable to Michael Freund and \$9,248.00 shall be payable to
25 Ryan Hoffman as reimbursement of Plaintiffs' attorneys' fees and costs.

26 **4.5** Kroger shall mail or deliver the payments in this Section in the form of checks
27 to the address of Michael Freund & Associates as stated in Section 11 (Provision of Notice)
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1 below. Within two (2) court days of the Effective Date, Plaintiffs and their counsel will
2 provide their taxpayer identification information and W-9 forms to enable Kroger to process
3 the payments.

4 **5. MODIFICATION OF CONSENT JUDGMENT**

5 **5.1** This Consent Judgment may be modified only by: (i) written agreement and
6 stipulation of the Parties and (ii) upon entry of a modified Consent Judgment by the Court.

7 **5.2** If Kroger seeks to modify this Consent Judgment under Section 5.1, then
8 Kroger must provide written notice to Plaintiffs of its intent (“Notice of Intent”). If Plaintiffs
9 seek to meet and confer with Kroger regarding the proposed modification in the Notice of
10 Intent, then Plaintiffs must provide written notice to Kroger within ten (10) days of receiving
11 the Notice of Intent. If Plaintiffs notify Kroger in a timely manner of their intent to meet and
12 confer, then the Parties shall meet and confer in good faith as required in this Section. The
13 Parties shall meet in person or by phone within ten (10) days of Plaintiffs’ notification of their
14 intent to meet and confer. Within ten (10) days of such meeting, if any Plaintiff disputes the
15 proposed modification, that Plaintiff must provide to Kroger a written basis for its position.
16 The Parties shall continue to meet and confer for an additional ten (10) days in an effort to
17 resolve any remaining disputes. The Parties may agree in writing to different deadlines for the
18 meet-and-confer period.
19

20 **5.3** In the event that Kroger initiates or otherwise requests a modification under
21 Section 5.1, Kroger shall reimburse Plaintiffs their documented reasonable costs and reasonable
22 attorney’s fees for the time spent in the meet-and-confer process and filing and arguing a joint
23 motion or application in support of a modification of the Consent Judgment; provided,
24 however, that these fees and costs shall not exceed \$8,000 total without the prior written
25 consent of Kroger.

26 **5.4** Where the meet-and-confer process does not lead to a joint motion or
27 application in support of a modification of the Consent Judgment, then either Party may seek
28 judicial relief on its own. In such a situation, the prevailing party may seek to recover costs and

1 reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party"
2 means a party who is successful in obtaining relief more favorable to it than the relief that the
3 other party was amenable to providing during the Parties' good faith attempt to resolve the
4 dispute that is the subject of the modification.

5
6 **5.5** If any court in a case alleging that a defendant sold canned smoked oysters,
7 canned whole oysters or canned mandarin oranges without providing clear and reasonable
8 warnings regarding the presence of lead in violation of Proposition 65 renders a final judgment
9 that such products do not require a warning under Proposition 65 because the average daily
10 exposure is at or below the average daily exposure for the Covered Products, based on the
11 exposure calculation accepted by that court, then Kroger shall be entitled to modify this Consent
12 Judgment to eliminate or modify the injunctive relief set forth in Section 3, consistent with the
13 court judgment as described herein, and considering any differences between the Covered
14 Products and the canned smoked and/or whole oyster products and canned mandarin orange
15 products addressed in another settlement or court judgment. In addition, Kroger shall be entitled
16 to modify this Consent Judgment to eliminate or modify the injunctive relief set forth in Section
17 3 if (a) lead is removed from the Proposition 65 list of chemicals; or (b) if any court in a case
18 alleging that a defendant sold canned smoked oysters, canned whole oysters or canned mandarin
19 oranges without providing clear and reasonable warnings regarding the presence of lead violation
20 of Proposition 65 renders a final judgment that such products do not require a warning under
21 Proposition 65 because such warnings are preempted by federal law, so long as such
22 modification is consistent with the court judgment as described herein. Plaintiffs shall not be
23 entitled to object to any modifications sought under this Section 5.5, except based upon an error
24 in calculation of the average daily exposure. The reimbursement provisions of Sections 5.3 and
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1 5.4 above are not applicable to modifications sought under this Section 5.5. If Plaintiffs object to
2 the calculation of the average daily exposure and a court sustains the objections, Kroger shall
3 reimburse Plaintiffs their documented reasonable costs and reasonable attorney's fees incurred to
4 raise the objection. Any fees and costs related to a sustained objection shall not exceed \$8,000
5 total without the prior written consent of Kroger.

6
7 **6. RETENTION OF JURISDICTION; ENFORCEMENT OF CONSENT
8 JUDGMENT**

9 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate
10 this Consent Judgment.

11 **6.2** Only after it complies with Section 15 below may any Party, by motion or
12 application for an order to show cause filed with this Court, enforce the terms and conditions
13 contained in this Consent Judgment.

14 **6.3** If Kroger determines that it will manufacture for sale in the State of California,
15 distribute into the State of California, or directly sell in the State of California any of the
16 Covered Products without a Proposition 65 warning, and subsequently any plaintiff alleges that
17 any such Covered Product fails to qualify as a Reformulated Covered Product (for which a
18 plaintiff alleges that no warning has been provided), then the plaintiff shall inform Kroger in a
19 reasonably prompt manner of the plaintiff's test results, including information sufficient to
20 permit Kroger to identify the Covered Products at issue. Kroger shall, within thirty (30) days
21 following such notice, provide the plaintiff with testing information, from an independent third-
22 party laboratory meeting the requirements of Sections 3.4.2 and 3.4.3, demonstrating Kroger's
23 compliance with the Consent Judgment. The Parties shall first attempt to resolve the matter
24 prior to any plaintiff taking any further legal action with the Court.

25 **7. APPLICATION OF CONSENT JUDGMENT**

26 This Consent Judgment shall have no application to Covered Products which are
27 distributed or sold exclusively outside the State of California.
28

1 **8. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

2 **8.1** This Consent Judgment is a full, final, and binding resolution between Plaintiffs,
3 on behalf of themselves and in the public interest, and Kroger, of any alleged violation of
4 Proposition 65 or its implementing regulations for failure to provide Proposition 65 warnings of
5 exposure to lead from the handling, use, or consumption of the Covered Products and fully
6 resolves all claims that have been or could have been asserted in this Action up to and
7 including the date of entry of Judgment for failure to provide Proposition 65 warnings for
8 exposure to lead from the Covered Products. Plaintiffs, on behalf of themselves and in the
9 public interest, hereby discharge and release Kroger, its parents, subsidiaries, affiliated entities
10 under common ownership, directors, officers, agents, employees, attorneys, and each entity to
11 or from whom Kroger directly or indirectly acquires, distributes or sells the Covered Products,
12 including but not limited to, distributors, wholesalers, customers, retailers, franchises,
13 cooperative members and licensees, (collectively, "Releasees") from any and all claims,
14 actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs and
15 expenses asserted, or that could have been asserted, as to any alleged violation of Proposition
16 65 arising from the failure to provide Proposition 65 warnings on the Covered Products
17 regarding lead as set forth in the Notices of Violation and the First Amended Complaint.
18

19 **8.2** Each Plaintiff, on behalf of itself only, hereby releases and discharges the
20 Releasees from all claims, causes of action, obligations, costs, expenses, attorney's fees,
21 damages, losses, liabilities and demands of Plaintiffs of any nature, character, or kind, whether
22 known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to lead
23 in the Covered Products as set forth in the Notices of Violation and the First Amended
24 Complaint that have been or could have been asserted in this Action up to and including the date
25 of entry of Judgment for failure to provide Proposition 65 warnings for exposure to lead in the
26 Covered Products. Each Plaintiff, on behalf of itself only, waive any and all rights they may
27 have under any applicable statute, including, but not limited to California Civil Code Section
28 1542 or common law principle which would limit the effect of the release in Section 8.1 and 8.2

1 to those claims actually known or suspected to exist at the time of the date of entry of Judgment.
2 Plaintiffs have full knowledge of the contents of California Civil Code Section 1542, which
3 reads as follows:

4 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
5 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT
6 TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
7 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
8 OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
9 HER SETTLEMENT WITH THE DEBTOR.

10 Each Plaintiff, on behalf of itself only, acknowledges and understands the significance and
11 consequences of this specific waiver of California Civil Code Section 1542.

12 **8.3** Compliance with the terms of this Consent Judgment shall be deemed to
13 constitute compliance with Proposition 65 by the Releasees regarding alleged exposures to lead
14 the Covered Products as set forth in the Notices of Violation and the First Amended Complaint.

15 **8.4** Plaintiffs and Kroger each release and waive all claims they may have
16 against each other for any statements or actions made or undertaken by them in connection with
17 the Notices of Violation or the First Amended Complaint; provided, however, that nothing in
18 Section 8 shall affect or limit any Party's right to seek to enforce the terms of this Consent
19 Judgment.
20

21 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

22 In the event that any of the provisions of this Consent Judgment is held by a court to be
23 unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.

24 **10. GOVERNING LAW**

25 The terms and conditions of this Consent Judgment shall be governed by and construed in
26 accordance with the laws of the State of California.

27 **11. PROVISION OF NOTICE**

28 All notices required to be given to either Party to this Consent Judgment by the other shall

1 be in writing and sent to the following agents listed below by: (a) first-class, registered, or certified
2 mail; (b) overnight courier; or (c) personal delivery. Courtesy copies via email may also be sent.

3 **FOR DAVID STEINMAN AND THE CHEMICAL TOXIN WORKING GROUP, INC.:**

4 David Steinman
5 The Chemical Toxin Working Group, Inc.
6 1801 Chart Trail
7 Topanga, CA 90290

7 **With a copy to:**

8 Michael Freund
9 Michael Freund & Associates
10 1919 Addison Street, Suite 105
11 Berkeley, CA 94704
12 Telephone: (510) 540-1992
13 Facsimile: (510) 540-5543

12 **FOR THE KROGER CO.:**

13 Steve Prough
14 The Kroger Co.
15 P.O. Box 54143
16 Los Angeles, CA 90054

15 **With a copy to:**

16 Lisa A. Cole
17 Nixon Peabody LLP
18 Two Palo Alto Square
19 3000 El Camino Real, Suite 500
20 Palo Alto, CA 94306-2106
21 Telephone: (650) 320-7700
22 Facsimile: (650) 320-7701

21 **12. COURT APPROVAL**

22 **12.1** If this Consent Judgment is not approved by the Court, it shall be void and have
23 no force or effect.

24 **12.2** Plaintiffs shall comply with California Health and Safety Code section
25 25249.7(f) and with Title II of the California Code Regulations, Section 3003.

26 **13. EXECUTION AND COUNTERPARTS**

27 This Consent Judgment may be executed in counterparts, which taken together shall be
28 deemed to constitute one document. A facsimile or .pdf signature shall be construed as valid as

1 the original signature.

2 **14. DRAFTING**

3 The terms of this Consent Judgment have been reviewed by the respective counsel for the
4 each Party to this settlement prior to its signing, and each Party has had an opportunity to fully
5 discuss the terms with counsel. The Parties agree that, in any subsequent interpretation and
6 construction of this Consent Judgment entered thereon, the terms and provisions shall not be
7 construed against any Party.

8 **15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

9 If a dispute arises with respect to either Party's compliance with the terms of this Consent
10 Judgment entered by the Court, the Parties shall meet in person or by telephone and endeavor to
11 resolve the dispute in an amicable manner. No action or motion may be filed in the absence of
12 such a good faith attempt to resolve the dispute beforehand. In the event an action or motion is
13 filed, however, the prevailing party may seek to recover costs and reasonable attorney's fees. As
14 used in the preceding sentence, the term "prevailing party" means a party who is successful in
15 obtaining relief more favorable to it than the relief that the other party was amenable to providing
16 during the parties' good faith attempt to resolve the dispute that is the subject of such enforcement
17 action.
18

19 **16. ENTIRE AGREEMENT, AUTHORIZATION**

20 **16.1** This Consent Judgment contains the sole and entire agreement and
21 understanding of the Parties with respect to the entire subject matter herein, and any and all
22 prior discussions, negotiations, commitments and understandings related hereto. No
23 representations, oral or otherwise, express or implied, other than those contained herein have
24 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
25 herein, shall be deemed to exist or to bind any Party.

26 **16.2** Each signatory to this Consent Judgment certifies that he or she is fully
27 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as
28 explicitly provided herein, each Party shall bear its own fees and costs.

17. **REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF CONSENT JUDGMENT**

This Consent Judgment has come before the Court upon the request of the Parties. The Parties request the Court to fully review this Consent Judgment and, being fully informed regarding the matters which are the subject of this action, to:

- (1) Find that the terms and provisions of this Consent Judgment represent a fair and equitable settlement of all matters raised by the allegations of the First Amended Complaint, that the matter has been diligently prosecuted, and that the public interest is served by such settlement; and
- (2) Make the findings pursuant to California Health and Safety Code section 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

IT IS SO STIPULATED:

Dated: 11-27, 2014

DAVID STEINMAN

By: 
David Steinman

Dated: 11-27, 2014

THE CHEMICAL TOXIN WORKING GROUP, INC.

By: 
David Steinman, Director

Dated: _____, 2014

THE KROGER CO.

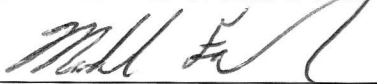
By: _____

Steve Prough

1 **APPROVED AS TO FORM:**

2
3 Dated: 2/25/2015, 2014

MICHAEL FREUND & ASSOCIATES

4 By: 
5 Michael Freund
6 Ryan Hoffman
7 Attorneys for David Steinman and The
8 Chemical Toxin Working Group, Inc.

9 Dated: _____, 2014

NIXON PEABODY LLP

10 By: _____
11 Gregory P. O'Hara
12 Attorneys for the Kroger Co.

13 **ORDER AND JUDGMENT**

14
15 Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is
16 approved and Judgment is hereby entered according to its terms.

17
18 Dated: _____, 2015

19 _____
20 Judge of the Superior Court

17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF
CONSENT JUDGMENT

This Consent Judgment has come before the Court upon the request of the Parties. The Parties request the Court to fully review this Consent Judgment and, being fully informed regarding the matters which are the subject of this action, to:

- (1) Find that the terms and provisions of this Consent Judgment represent a fair and equitable settlement of all matters raised by the allegations of the First Amended Complaint, that the matter has been diligently prosecuted, and that the public interest is served by such settlement; and
- (2) Make the findings pursuant to California Health and Safety Code section 25249.7(1)(4), approve the Settlement, and approve this Consent Judgment.

IT IS SO STIPULATED:

Dated: _____, 2014

DAVID STEINMAN

By: _____
David Steinman

THE CHEMICAL TOXIN WORKING
GROUP, INC.

Dated: _____, 2014

By: _____
David Steinman, Director

Dated: 2/23, 2014⁵

THE KROGER CO.

By:  _____
Steve Prough

1 APPROVED AS TO FORM:

2
3 Dated: _____, 2014

MICHAEL FREUND & ASSOCIATES

4
5 By: _____

6 Michael Freund
7 Ryan Hoffman
8 Attorneys for David Steinman and The
9 Chemical Toxin Working Group, Inc.

10 Dated: 2-24, 2014⁵

NIXON PEABODY LLP

11 By: _____

12 Gregory P. O'Hara
13 Attorneys for the Kroger Co.

14 **ORDER AND JUDGMENT**

15 Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is
16 approved and Judgment is hereby entered according to its terms.

17
18 Dated: _____, 2015

19 _____
20 Judge of the Superior Court

MICHAEL FREUND
ATTORNEY AT LAW
1915 ADDISON STREET
BERKELEY, CALIFORNIA 94704-1101

TEL 510/540-1992
FAX 510/540-5543
EMAIL FREUND1@AOL.COM

January 5, 2012

VIA CERTIFIED MAIL

David B. Dillon, Chairman and CEO
The Kroger Co.
1014 Vine Street
Cincinnati, OH 45202-1100

VIA PRIORITY MAIL

District Attorneys of All California Counties
and Select City Attorneys
(See Attached Certificate of Service)

Office of the California Attorney General
Proposition 65 Enforcement Reporting
1515 Clay Street, Suite 2000
P.O. Box 70550
Oakland, CA 94612-0550

Re: Notice of Violation Against The Kroger Co. for Violation of California Health & Safety Code Section 25249.5 et seq.

Dear Addressees:

I represent David Steinman, a committed environmentalist, journalist, consumer health advocate, publisher and author. His major books include Diet for a Poisoned Planet (1990, 2007); The Safe Shopper's Bible (1995); Living Healthy in a Toxic World (1996); and Safe Trip to Eden: Ten Steps to Save the Planet Earth from Global Warming Meltdown (2007). Through this Notice of Violation, Mr. Steinman seeks to reduce consumer exposures to lead in the named product set forth herein.

This letter constitutes notification that The Kroger Co. has violated the warning requirement of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with section 25249.5 of the Health and Safety Code). The product that is the subject of this Notice of Violation and the chemical in the product identified as exceeding allowable levels are:

Ralphs Premium Quality Whole Oyster in Water – lead

The Kroger Co. has manufactured, marketed, distributed and/or sold the listed product which has exposed and continues to expose numerous individuals within California to lead. This chemical was listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer on October 1, 1992 and as a chemical known to cause developmental toxicity, and male and female reproductive toxicity on February 27, 1987. The time period of these violations commenced one year after the listed dates above. The primary route of exposure has been through ingestion.

Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to certain listed chemicals. The Kroger Co. is in violation of Proposition 65 because it failed to provide a warning to consumers that they are being exposed to lead. (22 C.C.R. section 12601.) While in the course of doing business, the company is knowingly and intentionally exposing consumers to this chemical without first providing a clear and reasonable warning. (Health and Safety Code section 25249.6.) The method of warning should be a warning that appears on the product's label. 22 C.C.R. section 12601 (b)(1) (A). There are no warnings currently present on the company's label for this product.

Proposition 65 requires that notice and intent to sue be given to a violator 60-days before the suit is filed. With this letter, David Steinman gives notice of the alleged violation to the noticed party and the appropriate governmental authorities. This Notice of Violation covers all violations of Proposition 65 that are currently known to Mr. Steinman from information now available to us. Mr. Steinman is continuing his investigation that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, and referenced as Appendix A, has been provided to the noticed party.

If you have any questions, please contact my office at your earliest convenience.

Sincerely,



Michael Freund

cc: David Steinman

Attachments:

Certificate of Merit

Certificate of Service

OEHHA Summary to The Kroger Co.

Additional Supporting Information for Certificate of Merit (to Attorney General only)

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7 (d)

I, Michael Freund hereby declare:

1. This Certificate of Merit accompanies the attached Notice of Violation in which it is alleged that the party identified in the Notice has 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 David Steinman. Mr. Steinman is a committed environmentalist, journalist, consumer health advocate, publisher and author. The Notice of Violation alleges that the party identified has exposed persons in California to lead from the specified consumer product. Please refer to the Notice of Violation for additional details regarding the product names and alleged violations.
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. In particular, I have consulted with the chemists who conducted the laboratory testing for lead regarding this product and I have relied on the testing results. The testing was conducted by a reputable testing laboratory by experienced scientists. These facts, studies or other data derived through this investigation overwhelmingly demonstrate that the party identified in the Notice of Violation exposes persons to lead through ingestion.
4. Based on the information obtained through these consultants and on other information in my possession, I believe there is sufficient evidence that human exposures exist from exposure to the listed product from the noticed party. Furthermore, 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 California Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & 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: January 5, 2012



Michael Freund
Attorney for David Steinman

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the County of Alameda. I am over the age of eighteen years and not a party to the within entitled action; my business address is 1915 Addison Street, Berkeley, California 94704. On January 5, 2012 I served the within:

Notice of Violation and Certificate of Merit Against The Kroger Co. for Violation of California Health & Safety Code Section 25249.5 et seq. (Supporting Documentation sent to Attorney General only)

on the parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box in Berkeley, California as follows:

See attached Service List

I, Michael Freund, declare under penalty of perjury that the foregoing is true and correct.

Executed on January 5, 2012 at Berkeley, California.



Michael Freund

SERVICE LIST

District Attorney of Alameda County 1225 Fallon Street, Room 900 Oakland, CA 94612	District Attorney of Imperial County 939 Main Street El Centro, CA 92243	District Attorney of Orange County 401 Civic Ctr Drive West Santa Ana, CA 92701
District Attorney of Colusa County 547 Market Street Colusa, CA 95932	District Attorney of Lassen County 220 S. Lassen St., Ste 8 Susanville, CA 96130	District Attorney of Modoc County 204 S Court Street Alturas, CA 96101-4020
District Attorney of Contra Costa County 627 Ferry Street Martinez, CA 94553	District Attorney of Inyo County P.O. Drawer D Independence, CA 93526	District Attorney of Placer County 11562 "B" Avenue Auburn, CA 95603
District Attorney of Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney of Los Angeles County 210 W. Temple Street, Room 345 Los Angeles, CA 90012	District Attorney of San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415
District Attorney of Del Norte County 450 H Street, Ste 171 Crescent City, CA 95531	District Attorney of Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney of Plumas County 520 Main Street, Room 404 Quincy, CA 95971
District Attorney of Amador County 708 Court Street, #202 Jackson, CA 95642	District Attorney of Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney of San Diego County 330 West Broadway, Suite 1320 San Diego, CA 92101
District Attorney of Butte County 25 County Center Drive Oroville, CA 95965	District Attorney of Marin County 3501 Civic Center Dr., Room 130 San Rafael, CA 94903	District Attorney of Riverside County 4075 Main Street Riverside, CA 92501
District Attorney of El Dorado County 515 Main Street Placerville, CA 95667	District Attorney of Mono County P.O. Box 617 Bridgeport, CA 93517	District Attorney of San Francisco County 850 Bryant Street, Rm 325 San Francisco, CA 94103
District Attorney of Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney of Mariposa County P.O. Box 730 Mariposa, CA 95338	District Attorney of Sacramento County 901 "G" Street Sacramento, CA 95814
District Attorney of Fresno County 2220 Tulare Street, #1000 Fresno, CA 93721	District Attorney of Monterey County 230 Church Street, Bldg. 2 Salinas, CA 93901	District Attorney of San Joaquin County P.O. Box 990 Stockton, CA 95201
District Attorney of Glenn County P.O. Box 430 Willows, CA 95988	District Attorney of Mendocino County P.O. Box 1000 Ukiah, CA 95482	District Attorney of San Luis Obispo County 1050 Monterey St, Room 450 San Luis Obispo, CA 93408
District Attorney of Kings County 1400 West Lacey Hanford, CA 93230	District Attorney of Napa County 931 Parkway Mall Napa, CA 94559	District Attorney of San Benito County 419 Fourth Street, 2 nd Floor Hollister, CA 95023
District Attorney of Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney of Merced County 2222 "M" Street Merced, CA 95340	
District Attorney of Humboldt County 825 5th Street Eureka, CA 95501	District Attorney of Nevada County 201 Church St., Suite 8 Nevada City, CA 95959	

District Attorney of San Mateo County
400 County Ctr, 3rd Fl
Redwood City, CA 94063

District Attorney of Sierra County
Courthouse, P.O. Box 457
Downieville, CA 95936

District Attorney of Santa Barbara County
1105 Santa Barbara Street
Santa Barbara, CA 93101

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

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

District Attorney of Santa Clara County
70 West Hedding Street, West Wing
San Jose, CA 95110

District Attorney of Santa Cruz County
701 Ocean Street, Room 200
Santa Cruz, CA 95060

District Attorney of Sonoma County
600 Administration Drive, Room 212J
Santa Rosa, CA 95403

District Attorney of Shasta County
1525 Court Street, Third Floor
Redding, CA 96001-1632

District Attorney of Stanislaus County
800 11th Street, Room 200
PO BOX 442
Modesto, CA 95353

District Attorney of Sutter County
446 Second Street
Yuba City, CA 95991

District Attorney of Ventura County
800 South Victoria Ave
Ventura, CA 93009

District Attorney of Tehama County
P.O. Box 519
Red Bluff, CA 96080

District Attorney of Yolo County
301 Second Street
Woodland, CA 95695

District Attorney of Trinity County
P.O. Box 310
11 Court St.
Weaverville, CA 96093

District Attorney of Yuba County
215 Fifth Street
Marysville, CA 95901

District Attorney of Tulare County
221 S. Mooney Ave, Room 224
Visalia, CA 93291

District Attorney of Tuolumne County
423 No. Washington Street
Sonora, CA 95370

San Jose City Attorney's Office
200 East Santa Clara Street
San Jose, CA 95113

Los Angeles City Attorney's Office
800 City Hall East
200 N. Main Street
Los Angeles, CA 90012

San Diego City Attorney's Office
1200 3rd Avenue #1620
San Diego, CA 92101

San Francisco City Attorney's Office
City Hall, Room 234
San Francisco, CA 94102

California Attorney General's Office
Attention: Proposition 65
Coordinator
1515 Clay Street, Suite 2000
P.O. Box 70550
Oakland, CA 94612

David Dillon, Chairman & CEO
The Kroger Co.
1014 Vine Street
Cincinnati, OH 45202

LAW OFFICE OF
MICHAEL FREUND

1919 ADDISON STREET, SUITE 105
BERKELEY, CALIFORNIA 94704-1101

TEL (510) 540-1992
FAX (510) 540-5543
EMAIL FREUND1@AOL.COM

February 24, 2012

VIA CERTIFIED MAIL

David B. Dillon, Chairman and CEO
The Kroger Co.
1014 Vine Street
Cincinnati, OH 45202-1100

Office of the California Attorney General
Proposition 65 Enforcement Reporting
1515 Clay Street, Suite 2000
P.O. Box 70550
Oakland, CA 94612-0550

Re: Notice of Violation Against The Kroger Co. for Violation of California Health & Safety Code Section 25249.5 et seq.

Dear Addressees:

I represent David Steinman, a committed environmentalist, journalist, consumer health advocate, publisher and author. His major books include Diet for a Poisoned Planet (1990, 2007); The Safe Shopper's Bible (1995); Living Healthy in a Toxic World (1996); and Safe Trip to Eden: Ten Steps to Save the Planet Earth from Global Warming Meltdown (2007). Through this Notice of Violation, Mr. Steinman seeks to reduce consumer exposures to lead in the named products set forth herein.

This letter constitutes notification that The Kroger Co. has violated the warning requirement of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with section 25249.5 of the Health and Safety Code). The products subject to this Notice of Violation and the chemical in the products identified as exceeding allowable levels are:

Ralphs Mandarin Oranges, Peeled Segments in Light Syrup – lead
Ralphs Premium Quality Smoked Oysters in Cottonseed Oil – lead

The Kroger Co. has manufactured, marketed, distributed and/or sold the listed products which have exposed and continue to expose numerous individuals within California to lead. This chemical was listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer on October 1, 1992 and as a chemical known to cause developmental toxicity, and male and female reproductive toxicity on February 27, 1987. The time period of these violations commenced one year after the listed dates above. The primary route of exposure has been through

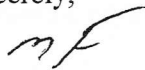
ingestion.

Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to certain listed chemicals. The Kroger Co. is in violation of Proposition 65 because it failed to provide a warning to consumers that they are being exposed to lead. (22 C.C.R. section 12601.) While in the course of doing business, the company is knowingly and intentionally exposing consumers to this chemical without first providing a clear and reasonable warning. (Health and Safety Code section 25249.6.) The method of warning should be a warning that appears on the product's label. 22 C.C.R. section 12601 (b)(1) (A). There are no warnings currently present on the company's label for these products.

Proposition 65 requires that notice and intent to sue be given to a violator 60-days before the suit is filed. With this letter, David Steinman gives notice of the alleged violations to the noticed party and the appropriate governmental authorities. This Notice of Violation covers all violations of Proposition 65 that are currently known to Mr. Steinman from information now available to us. Mr. Steinman is continuing his investigation that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, and referenced as Appendix A, has been provided to the noticed party.

If you have any questions, please contact my office at your earliest convenience.

Sincerely,



Michael Freund

cc: David Steinman

Attachments:

Certificate of Merit

Certificate of Service

OEHHA Summary to The Kroger Co.

Additional Supporting Information for Certificate of Merit (to Attorney General only)

LAW OFFICE OF
MICHAEL FREUND

1919 ADDISON STREET, SUITE 105
BERKELEY, CALIFORNIA 94704-1101

TEL (510) 540-1992
FAX (510) 540-5543
EMAIL FREUND1@AOL.COM

February 20, 2013

VIA CERTIFIED MAIL

David B. Dillon, Chairman and CEO
The Kroger Co.
1014 Vine Street
Cincinnati, OH 45202-1100

VIA PRIORITY MAIL

District Attorneys of All California Counties
and Select City Attorneys
(See Attached Certificate of Service)

Office of the California Attorney General
Proposition 65 Enforcement Reporting
1515 Clay Street, Suite 2000
P.O. Box 70550
Oakland, CA 94612-0550

**Re: Notice of Violation Against The Kroger Co. for Violation of California Health & Safety
Code Section 25249.5 et seq.**

Dear Addressees:

I represent The Chemical Toxin Working Group, a California non-profit corporation dedicated to reducing the amount of chemical toxins in consumer products. The Chemical Toxin Working Group was created by David Steinman, a committed environmentalist, journalist, consumer health advocate, publisher and author. His major books include Diet for a Poisoned Planet (1990, 2007); The Safe Shopper's Bible (1995); Living Healthy in a Toxic World (1996); and Safe Trip to Eden: Ten Steps to Save the Planet Earth from Global Warming Meltdown (2007). Through this Notice of Violation, The Chemical Toxin Working Group seeks to reduce consumer exposures to lead in the products set forth herein.

This letter constitutes notification that the Kroger Co. ("Kroger") has violated the warning requirement of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with section 25249.5 of the Health and Safety Code). The product subject to this Notice of Violation and the chemical in the product identified as exceeding allowable levels is:

Ralphs Lite Mandarin Oranges, Peeled Segments in Mandarin Orange Juice – lead

The Kroger Co. has manufactured, marketed, distributed and/or sold the above product which has exposed and continue to expose numerous individuals within California to lead. This chemical was listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer on October 1, 1992 and as a chemical known to cause developmental toxicity, and male and female reproductive toxicity on February 27, 1987. The time period of these violations commenced one

year after the listed dates above. The primary route of exposure has been through ingestion.

Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to certain listed chemicals. Kroger is in violation of Proposition 65 because the company failed to provide a warning to consumers that they are being exposed to lead. (22 C.C.R. section 12601.) While in the course of doing business, the company is knowingly and intentionally exposing consumers to this chemical without first providing a clear and reasonable warning. (Health and Safety Code section 25249.6.) The method of warning should be a warning that appears on the product's label. 22 C.C.R. section 12601 (b)(1) (A). There are no warnings currently present on the company's label for these products.

Proposition 65 requires that notice and intent to sue be given to a violator 60-days before the suit is filed. With this letter, The Chemical Toxin Working Group gives notice of the alleged violations to the noticed party and the appropriate governmental authorities. This Notice of Violation covers all violations of Proposition 65 that are currently known to the noticing party from information now available. The Chemical Toxin Working Group is continuing its investigation that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, and referenced as Appendix A, has been provided to the noticed party.

If you have any questions, please contact my office at your earliest convenience.

Sincerely,



Michael Freund

cc: The Chemical Toxin Working Group

Attachments:

Certificate of Merit

Certificate of Service

OEHHA Summary to The Kroger Co.

Additional Supporting Information for Certificate of Merit (to Attorney General only)

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7 (d)


I, Michael Freund hereby declare:

1. This Certificate of Merit accompanies the attached Notice of Violation in which it is alleged that the party identified in the Notice has 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 The Chemical Toxin Working Group. The Notice of Violation alleges that the party identified has exposed persons in California to lead from specified consumer products without providing a Proposition 65 warning. Please refer to the Notice of Violation for additional details regarding the product names and alleged violations.
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. In particular, I have consulted with the laboratory who conducted the testing for lead regarding these products and I have relied on the testing results. The testing was conducted by a reputable testing laboratory by experienced scientists. These facts, studies or other data derived through this investigation overwhelmingly demonstrate that the party identified in the Notice of Violation exposes persons to lead through ingestion.
4. Based on the information obtained through the testing laboratory and on other information in my possession, I believe there is sufficient evidence that human exposures exist from exposure to the listed products from the noticed party. Furthermore, 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 California Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & 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: February 19, 2013

A handwritten signature in black ink, appearing to read 'm f', with a long horizontal stroke extending to the right.

Michael Freund
Attorney for The Chemical Toxin Working Group

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the County of Alameda. I am over the age of eighteen years and not a party to the within entitled action. My business address is 1919 Addison Street, Suite 105, Berkeley, California 94704. On February 20, 2013 I served the within:

Notice of Violation Against The Kroger Co. for Violation of California Health & Safety Code Section 25249.5 et seq. and Certificate of Merit

on the parties in said action, via electronic mail to the California Attorney General and by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box in Berkeley, California addressed as follows:

See attached Service List

I, Michael Freund, declare under penalty of perjury that the foregoing is true and correct. Executed on February 20, 2013 at Berkeley, California



Michael Freund

Service List

District Attorney, Alameda County
1225 Fallon Street, Suite 900
Oakland, CA 94612

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

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

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

District Attorney, Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249

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

District Attorney, Contra Costa County
900 Ward Street
Martinez, CA 94553

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

District Attorney, El Dorado County
515 Main Street
Placerville, CA 95667

District Attorney, Fresno County
2220 Tulare Street, Suite 1000
Fresno, CA 93721

District Attorney, Glenn County
Post Office Box 430
Willows, CA 95988

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

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

District Attorney, Inyo County
230 W. Line Street
Bishop, CA 93514

District Attorney, Kern County
1215 Truxtun Avenue
Bakersfield, CA 93301

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

District Attorney, Lake County
255 N. Forbes Street
Lakeport, CA 95453

District Attorney, Lassen County
220 South Lassen Street, Ste. 8
Susanville, CA 96130

District Attorney, Los Angeles County
210 West Temple Street, Suite 18000
Los Angeles, CA 90012

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

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

District Attorney, Mariposa County
Post Office Box 730
Mariposa, CA 95338

District Attorney, Mendocino County
Post Office Box 1000
Ukiah, CA 95482

District Attorney, Merced County
550 W. Main Street
Merced, CA 95340

District Attorney, Modoc County
204 S Court Street, Room 202
Alturas, CA 96101-4020

District Attorney, Mono County
Post Office Box 617
Bridgeport, CA 93517

District Attorney, Monterey County
Post Office Box 1131
Salinas, CA 93902

District Attorney, Napa County
931 Parkway Mall
Napa, CA 94559

District Attorney, Nevada County
110 Union Street
Nevada City, CA 95959

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

District Attorney, Placer County
10810 Justice Center Drive, Ste 240
Roseville, CA 95678

District Attorney, Plumas County
520 Main Street, Room 404
Quincy, CA 95971

District Attorney, Riverside County
3960 Orange Street
Riverside, CA 92501

District Attorney, Sacramento County
901 "G" Street
Sacramento, CA 95814

District Attorney, San Benito County
419 Fourth Street, 2nd Floor
Hollister, CA 95023

District Attorney, San Bernardino County
316 N. Mountain View Avenue
San Bernardino, CA 92415-0004

District Attorney, San Diego County
330 West Broadway, Suite 1300
San Diego, CA 92101

District Attorney, San Francisco County
850 Bryant Street, Suite 322
San Francisco, CA 94103

District Attorney, San Joaquin County
222 E. Weber Ave. Rm. 202
Stockton, CA 95202

District Attorney, San Luis Obispo County
1035 Palm St, Room 450
San Luis Obispo, CA 93408

District Attorney, San Mateo County
400 County Ctr., 3rd Floor
Redwood City, CA 94063

District Attorney, Santa Barbara County
1112 Santa Barbara Street
Santa Barbara, CA 93101

District Attorney, Santa Clara County
70 West Hedding Street
San Jose, CA 95110

District Attorney, Santa Cruz County
701 Ocean Street, Room 200
Santa Cruz, CA 95060

District Attorney, Shasta County
1355 West Street
Redding, CA 96001

District Attorney, Sierra County
PO Box 457
Downieville, CA 95936

District Attorney, Siskiyou County
Post Office Box 986
Yreka, CA 96097

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

District Attorney, Sonoma County
600 Administration Drive,
Room 212J
Santa Rosa, CA 95403

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

District Attorney, Sutter County
446 Second Street
Yuba City, CA 95991

District Attorney, Tehama County
Post Office Box 519
Red Bluff, CA 96080

District Attorney, Trinity County
Post Office Box 310
Weaverville, CA 96093

District Attorney, Tulare County
221 S. Mooney Blvd., Room 224
Visalia, CA 93291

District Attorney, Tuolumne County
423 N. Washington Street
Sonora, CA 95370

District Attorney, Ventura County
800 South Victoria Ave, Suite 314
Ventura, CA 93009

District Attorney, Yolo County
301 2nd Street
Woodland, CA 95695

District Attorney, Yuba County
215 Fifth Street, Suite 152
Marysville, CA 95901

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