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**SETTLEMENT AGREEMENT**

**1. PARTIES**

1.1 The parties to this Settlement Agreement (“Agreement”) are Consumer Advocacy Group, Inc. (“CAG”) on the one hand, and The J.M. Smucker Company (“JMS”), Massimo Zanetti Beverage USA, Inc. (“MZB”), and Atlantic Coffee Solutions, LLC (“ACS”) on the other (JMS, MZB, and ACS collectively the “Settling Companies”). CAG and Settling Companies are referred to collectively as the “Parties” and each of them as a “Party.”

1.2 CAG is an organization with its principal place of business in California, acting as a citizen enforcer of California Health and Safety Code § 25249.5 *et seq.* (“Proposition 65”).

1.3 JMS is an Ohio corporation, MZB is a Delaware corporation, and ACS is a Texas limited liability company, each employing ten (10) or more persons and, for the purpose of Proposition 65, each is a person doing business in California.

**2. ALLEGATIONS**

2.1 On or about July 14, 2014, CAG served a 60-Day Notice of Violation under Proposition 65 to MZB, M. Zanetti Industries, S.A., Fresh & Easy Neighborhood Foundation, and The Yucaipa Companies, LLC, and to the California Attorney General, County District Attorneys, and City Attorneys for each California city containing a population of at least 750,000 people in whose jurisdictions the alleged violations allegedly occurred (“July 14 MZB Notice”). The July 14 MZB Notice alleged that MZB and the other parties named in the July 14 MZB Notice caused consumer product exposures in violation of Proposition 65 by producing or making available powdered coffee and cappuccino beverage products containing lead, including Hills Bros. Cappuccino Drink Mix French Vanilla, Barcode 0 18400 31251 7 (“Powdered Coffee Drink”).

2.2 On or about July 24, 2014, CAG served a 60-Day Notice of Violation under Proposition 65 to MZB, M. Zanetti Industries, S.A., Fresh & Easy Neighborhood Foundation, and The Yucaipa Companies, LLC, and to the California Attorney General, County District Attorneys, and City Attorneys for each California city containing a population of at least 750,000 people in whose jurisdictions the alleged violations allegedly occurred (“July 24 MZB Notice”). The July

1 24 MZB Notice alleged that MZB and the other parties named in the July 24 MZB Notice caused  
2 consumer product exposures in violation of Proposition 65 by producing or making available  
3 instant coffee containing lead, including Hillson Regular Instant Coffee, Barcode 5 051379  
4 031237 (“Instant Coffee”).

5 2.3 On or about July 24, 2014, CAG served a 60-Day Notice of Violation under  
6 Proposition 65 to JMS, Fresh & Easy Neighborhood Foundation, Rowland Coffee Roasters, Inc.,  
7 and The Yucaipa Companies, LLC, and to the California Attorney General, County District  
8 Attorneys, and City Attorneys for each California city containing a population of at least 750,000  
9 people in whose jurisdictions the alleged violations allegedly occurred (“July 24 JMS Notice”).

10 The July 24 JMS Notice alleged that JMS and the other parties named in the July 24 JMS Notice  
11 caused consumer product exposures in violation of Proposition 65 by producing or making  
12 available instant espresso coffee containing lead, including Medaglia D’Oro Instant Espresso  
13 Coffee, Barcode 0 74471 00091 3 (“Instant Coffee”).

14 2.4 On or about August 22, 2014, CAG served a 60-Day Notice of Violation under  
15 Proposition 65 to Maximus Coffee Group LP, predecessor in interest to ACS, and to the California  
16 Attorney General, County District Attorneys, and City Attorneys for each California city  
17 containing a population of at least 750,000 people in whose jurisdictions the violations allegedly  
18 occurred (“August 22 ACS Notice”). The August 22 ACS Notice alleged that Maximus Coffee  
19 Group/ACS caused consumer product exposures in violation of Proposition 65 by producing or  
20 making available instant coffee containing lead, including Nice! Original Roast Instant Coffee,  
21 WIC 434097, Barcode 0 49022 55794 9 (“Instant Coffee”).

22 The Notices referred to in Sections 2.1 through 2.4 are attached hereto as Exhibit A, and  
23 collectively referred to as the “Notices.”

24 2.5 Lead is listed under Proposition 65 as a chemical known to the State of California  
25 to cause cancer, birth defects, and/or other reproductive harm.

26 2.6 The products that are covered by this Agreement are all Powdered Coffee and  
27 Instant Coffee products manufactured, distributed, supplied, sold, or offered for sale in California  
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1 by Settling Companies, respectively, and which products may be manufactured, distributed,  
2 supplied, sold, or offered for sale in California under Settling Companies' respective brands or  
3 downstream customer private labels ("Covered Products") .

4       2.7       Each Settling Company denies the material, factual, and legal allegations  
5 contained in the Notices as applicable to that Settling Company, and maintains that all Covered  
6 Products that each respective Settling Company has manufactured, distributed, supplied, sold,  
7 and/or offered for sale in California have been and are in compliance with all laws, including  
8 Proposition 65.

9       2.8       The Parties have expended effort and resources in investigating and evaluating  
10 the allegations set forth in the Notices, including exchanging information regarding the Covered  
11 Products and engaging in a negotiation and technical dialogue regarding settlement.

12       2.9       To avoid prolonged and costly litigation, the Parties therefore enter into this  
13 Agreement to resolve and settle all Proposition 65 claims concerning the Covered Products,  
14 including without limitation any disputes, obligations, claims and/or causes of action that were or  
15 could have been asserted by CAG with respect to such matters.

16       2.10       This Agreement is the direct result of a compromise of disputed allegations and  
17 claims. As such, it is the Parties' intent that nothing in this Agreement shall be construed as an  
18 admission by any Party of any fact, conclusion of law, issue of law, or violation of law, nor shall  
19 compliance with this Agreement constitute or be construed as an admission by any Party of any  
20 fact, conclusion of law, issue of law, or violation of law.

21       2.11       Except as otherwise expressly provided herein, nothing in this Agreement shall  
22 prejudice, waive or impair any right, remedy, argument or defense any Party may have in any  
23 other legal proceeding.

24 **3.       EFFECTIVE DATE**

25       3.1       The Effective Date of this Agreement shall be the date on which this Agreement  
26 is fully executed by the Parties.

27 **4.       INJUNCTIVE RELIEF**

28

1           4.1       Reformulation Commitment.

2                   4.1.1 *Instant Coffee.* Commencing ninety (90) calendar days after the Effective  
3 Date, each Settling Company respectively shall not manufacture, distribute, supply, sell, or offer  
4 for sale, in California any Instant Coffee product, unless such Instant Coffee product is a  
5 Reformulated Product as set forth in Section 4.2.1.

6                   4.1.2 *Powdered Coffee Drink.* Commencing two-hundred and seventy (270)  
7 calendar days after the Effective Date, MZB shall not manufacture, distribute, supply, sell, or offer  
8 for sale, in California any Powdered Coffee Drink product, unless such Powdered Coffee Drink  
9 product is a Reformulated Product as set forth in Section 4.2.1.

10           4.2       Reformulated Products.

11                   4.2.1. A Reformulated Product for purposes of this Agreement is a Covered  
12 Product for which daily consumption contains no more than 0.5 micrograms (mcg) of lead.

13 **5.       PAYMENTS**

14           5.1       In full and complete satisfaction of all civil penalties and reasonable attorney’s  
15 fees and costs incurred by CAG that have or could have been claimed in connection with this  
16 action up to and including the Effective Date, Settling Companies collectively shall pay the total  
17 sum of one-hundred and eight thousand dollars (\$108,000), allocated as set forth in Exhibit B.  
18 Payment shall be made within fifteen (15) calendar days after the Effective Date. Each Settling  
19 Company shall be solely responsible for payment of its allocated share of the total collective  
20 payment, and shall not be responsible for the payment obligation of any other Settling Company.

21                   a.       Of the civil penalty amounts set forth in Exhibit B, 75% shall be allocated  
22 to the Office of Environmental Health Hazard Assessment (“OEHHA”), and 25% shall be  
23 allocated to CAG. Each respective civil penalty payment shall be made by the individual paying  
24 Settling Company in two checks. One check payable to Consumer Advocacy Group, Inc. for 25%  
25 of the civil penalty, and a second check payable to OEHHA representing the remaining 75% of the  
26 civil penalty. Such payment to OEHHA shall be made within thirty (30) calendar days after  
27 receipt by CAG of each respective civil penalty payment. CAG shall provide to the Settling  
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1 Companies proof of payment to OEHHA within five (5) calendar days of CAG's payment to  
2 OEHHA. All checks shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Associates, 9100  
3 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212. Additionally, two separate  
4 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box  
5 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of the civil penalty paid to  
6 OEHHA. The second 1099 shall be issued in the amount payable to CAG as its 25% share of the  
7 civil penalties.

8           b.       Each separate payment to CAG shall be made in a check payable to  
9 Consumer Advocacy Group, Inc.

10           c.       Each respective attorney fee and cost reimbursement payment shall be made  
11 in a check payable to Yeroushalmi & Associates.

12           5.2       All payments shall be delivered to the following address:

13                               Reuben Yeroushalmi  
14                               Yeroushalmi & Yeroushalmi  
15                               9100 Wilshire Boulevard  
16                               Suite 240W  
17                               Beverly Hills, California 90212

18           5.3       Except as otherwise provided in Section 5.1 above and Section 10.3 below, the  
19 Parties agree to bear their own costs and attorney's fees in connection with the preparation and  
20 execution of this Agreement.

21 **6.       CAG'S RELEASE OF ALL CLAIMS**

22           6.1       This Agreement is a full, final, and binding resolution between (a) CAG on  
23 behalf of CAG, and (b)(i) each Settling Company, and each Settling Company's respective  
24 shareholders, members, parents, divisions, subdivisions, subsidiaries, partners, and affiliated  
25 entities, and each of their respective directors, officers, employees, attorneys, and any and all  
26 successors and assigns (collectively, "Releasees"), and (ii) all entities to which Releasees directly  
27 or indirectly distribute or sell the Covered Products, or have directly or indirectly distributed or  
28 sold the Covered Products, including but not limited to distributors, wholesalers, customers,  
retailers, franchisees, cooperative members, licensors, licensees, owners, purchasers, users, and

1 their respective parent companies, subsidiaries, corporate affiliates, and all entities with which a  
2 Releasee may co-manufacture the Covered Products (collectively, “Downstream Releasees”),  
3 regarding any violations or alleged violations of Proposition 65 that have or could have been  
4 asserted against Releasees and/or Downstream Releasees, with respect to the failure to warn about  
5 exposures to lead from any Covered Products manufactured, distributed, supplied, sold or offered  
6 for sale by Releasees or Downstream Releasees.

7           6.2       CAG, acting on its own behalf, releases Releasees and Downstream Releasees  
8 from all claims for violations or alleged violations of Proposition 65 prior to the Effective Date  
9 based on exposures to lead from any Covered Products manufactured, distributed, supplied, sold  
10 or offered for sale by Releasees or Downstream Releasees.

11           6.3       In further consideration of the promises and agreements herein contained, CAG,  
12 on its own behalf, and on behalf of its past and current agents, representatives, attorneys,  
13 successors, predecessors, and/or assigns, hereby waives and releases any right to institute or  
14 participate in, directly or indirectly, any form of legal action and releases all claims that it may  
15 have, including without limitation, all actions and causes of action in law and/or in equity, all  
16 suits, costs, fines, penalties, losses, or expenses, including but not exclusively, investigation fees,  
17 expert fees, and attorneys’ fees, liabilities, obligations, and demands of any nature, whether known  
18 or unknown, suspected or unsuspected, arising out of alleged or actual exposures to lead contained  
19 in the Covered Products manufactured, distributed, supplied, sold, and/or offered for sale by each  
20 Settling Company, respectively, before the Effective Date. CAG has full knowledge of section  
21 1542 of the California Civil Code, and acknowledges that the claims released in this section 6.3  
22 may include unknown claims and waives Civil Code section 1542 as to any such unknown claims.  
23 Section 1542 reads as follows:

24           A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
25           CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
26           FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN  
27           BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER  
28           SETTLEMENT WITH THE DEBTOR.

1 CAG acknowledges and understands the significance and consequences of this specific waiver of  
2 California Civil Code section 1542. The release in this section shall have no force or effect with  
3 respect to a respective Settling Company until the full amount of payments set forth in Exhibit B  
4 required of that Settling Company are paid in full.

5           6.4       The Parties agree that material compliance with the terms of this Agreement  
6 constitutes compliance with Proposition 65 by any Releasee or Downstream Releasee with respect  
7 to any alleged failure to warn about lead in the Covered Products manufactured, distributed,  
8 supplied, sold, and/or offered for sale by any Settling Company after the Effective Date.

9           6.5       Liability for Covered Products that were manufactured, distributed, supplied,  
10 sold, and/or offered for sale in California prior to the Effective Date shall be subject to the release  
11 of liability set forth in this Section 6, without regard to when such Covered Products were, or are  
12 in the future, sold to customers or users.

13 **7.       SETTLING COMPANIES RELEASE OF CAG**

14           7.1       Each Settling Company respectively waives any and all claims against CAG, and  
15 its attorneys, consultants, and representatives, for any and all actions or statements made or  
16 undertaken by CAG in the course of this action or otherwise seeking enforcement of Proposition  
17 65 against them in this matter, and/or with respect to the Covered Products.

18 **8.       PUBLIC BENEFIT**

19           8.1       It is the Settling Companies' understanding that the commitments agreed to  
20 herein, and actions to be taken by Settling Companies under this Agreement, confer a significant  
21 benefit to the general public, as set forth in Code of Civil Procedure section 1021.5 and Cal.  
22 Admin. Code tit. 11, section 3201. As such, it is the intent of Settling Companies that to the  
23 extent any other private party initiates an action alleging a violation of Proposition 65 with respect  
24 to any Settling Company's failure to provide a warning concerning exposure to lead with respect  
25 to the Covered Products it has distributed, sold, or offered for sale in California, or will distribute,  
26 sell, or offer for sale in California, such distribution or sale within the scope of this Agreement,  
27 such private party action would not confer a significant benefit on the general public as to those  
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1 Covered Products addressed in this Settlement Agreement, provided that the Settling Company  
2 subject to the subsequent action is in material compliance with this Settlement Agreement.

3 **9. NOTICES**

4 9.1 All notices, requests, demands and other correspondence (collectively, “Section 9  
5 Notice”) that the Parties are required or desire to serve upon or deliver to the other Party(ies) shall  
6 be in writing and sent by first class mail (certified and return receipt requested), overnight courier  
7 services, or electronic mail as follows:

8 For Consumer Advocacy Group:

9 Reuben Yeroushalmi  
10 Yeroushalmi & Yeroushalmi  
11 9100 Wilshire Boulevard  
12 Suite 240W  
13 Beverly Hills, California 90212  
14 reuben@yeroushalmi.com

15 For J.M. Smucker Company:

16 The J.M. Smucker Company  
17 1 Strawberry Lane  
18 Orrville, Ohio 44667  
19 Attn: General Counsel  
20 jeannette.knudsen@jmsmucker.com

21 For Massimo Zanetti Beverage:

22 Wayne Goodman  
23 General Counsel  
24 Massimo Zanetti Beverage USA, Inc.  
25 1370 Progress Road  
26 Suffolk, Virginia 23434  
27 wgoodman@mzb-usa.com

28 For Atlantic Coffee Solutions:

Cary W. Urban  
Corporate Counsel  
Atlantic Coffee Solutions, LLC  
3900 Harrisburg Blvd.  
Houston, Texas 77003  
cary.urban@atlanticcoffeesolutions.com

With a copy, as to each Settling Company, to:

Joshua A. Bloom  
Meyers, Nave, Riback, Silver & Wilson

1 555 12th Street, Suite 1500  
2 Oakland, CA 94607  
3 jbloom@meyersnave.com

4 9.2 Any Section 9 Notice sent by first class mail shall be deemed received five (5)  
5 calendar days after the date of mailing. Any Notice sent by electronic mail shall be deemed  
6 received upon electronic transmission thereof, provided sender does not receive an electronic  
7 notice of non-delivery. Any Section 9 Notice sent by overnight courier service shall be deemed  
8 received on the day of actual delivery as shown by the confirmation of delivery by the messenger  
9 or courier service. If the date of receipt of any Section 9 Notice to be given hereunder falls on a  
10 weekend or legal holiday, then such date of receipt shall be automatically extended to the next  
11 business day.

12 9.3 The foregoing addresses may be changed by Section 9 Notice given in  
13 accordance with this Section 9 without requiring modification of the Agreement pursuant to  
14 Section 15.

## 14 **10. DISPUTE RESOLUTION/ENFORCEMENT**

15 10.1 Notice of Settlement Agreement Violation. If CAG alleges a violation of this  
16 Agreement by any Settling Company, it shall serve notice of such alleged violation (“NOV”) on  
17 that Settling Company. At a minimum, the NOV shall specify the Covered Product alleged to  
18 contain lead levels above the reformulation level set forth in section 4.2.1, and include a copy of  
19 the test results obtained that form the basis of CAG’s allegations, the test methodology used, and  
20 specify in detail any modification to accepted testing methodologies. CAG shall also provide to  
21 the Settling Company a split sample of the Covered Product from the same container from which  
22 the CAG sample was drawn.

23 10.2 Dispute Resolution Procedure. In the event that CAG serves an NOV on a  
24 Settling Company, or in the event of any other dispute between the Parties arising out of this  
25 Consent Judgment, the Parties shall meet and confer in an attempt to resolve the dispute  
26 informally. Should such attempts at informal resolution fail, the disputing party may, by motion  
27 or application for an order to show cause before a court of competent jurisdiction, file a motion or  
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1 application to enforce the terms of this Agreement, provided, however, that no action by CAG to  
2 enforce this Agreement may be commenced until at least ninety (90) days after CAG serves the  
3 respective Settling Company(ies) with an NOV.

4 10.3 Prevailing Party Fees and Costs. In the event that any Party files a motion or  
5 application to enforce the terms of this Agreement, the prevailing party in such action shall be  
6 entitled to recover from the other non-prevailing Party(ies) to the action its reasonable attorney's  
7 fees and costs incurred as a result of such motion or application. This Agreement may only be  
8 enforced by the Parties.

9 **11. SUCCESSORS AND ASSIGNS**

10 11.1 This Agreement shall be binding upon and inure to the benefit of the Parties  
11 hereto and their respective divisions, subdivisions, and subsidiaries, and the successors or assigns  
12 of any of them.

13 **12. GOVERNING LAW**

14 12.1 The terms of this Agreement shall be governed by the laws of the State of  
15 California.

16 12.2 In the event that Proposition 65 is repealed or otherwise rendered inapplicable or  
17 limited by reason of law generally, as to any Settling Company specifically as a result of a  
18 statutory exemption, or as to any of the Covered Products, then any Settling Company may  
19 provide written notice to CAG of any asserted change in the law, or its applicability to Settling  
20 Company or the Covered Products, and Settling Company shall have no further obligations  
21 pursuant to this Agreement to the extent that Settling Company or the Covered Products are so  
22 affected. Furthermore, to the extent that the maximum available dose level(s) and/or no  
23 significant risk level(s) for lead is/are decreased from levels applicable as of the Effective Date,  
24 such decrease shall have no effect on, or otherwise act to revise, the standards set forth in Section  
25 4.2 herein for the establishment of Reformulated Products.

26 **13. DRAFTING AND INTERPRETATION**

27 13.1 This Agreement is a result of the joint efforts of the Parties. The Parties,  
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1 including their counsel, have each been given a full opportunity to participate in the preparation of  
2 this Agreement. Each of the Parties agrees and represents that no promise, inducement or  
3 agreement not expressed in this Agreement has been made to effectuate this Agreement. The  
4 Parties' counsel have reviewed and approved this Agreement. Accordingly, the rule of  
5 construction that any ambiguities are to be resolved against the drafting party shall not be  
6 employed in the interpretation of this Agreement.

7 **14. SEVERABILITY**

8 14.1 In the event that any of the provisions of this Agreement are held by a court to be  
9 unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected,  
10 but only to the extent the deletion of the provision deemed unenforceable does not materially  
11 affect or otherwise result in the effect of the Agreement being contrary to the Parties' intent of  
12 entering into this Agreement.

13 **15. MODIFICATION**

14 15.1 This Agreement or any of its provisions may be modified only by express written  
15 agreement of the Parties, or by an order of a court of competent jurisdiction upon motion and in  
16 accordance with law.

17 15.2 A Party seeking to modify this Agreement through a court order shall attempt in  
18 good faith to meet and confer with all affected Parties prior to filing a motion to modify the  
19 Agreement.

20 **16. ENTIRE AGREEMENT**

21 16.1 This Agreement contains the entire integrated agreement and understanding of  
22 the Parties and supersedes any and all prior written or oral agreements, negotiations, commitments  
23 or understandings concerning the subject matter of this Agreement.

24 **17. COUNTERPARTS**

25 17.1 This Agreement may be executed in counterparts, each of which shall be deemed  
26 an original, and all of which, when taken together, shall constitute one and the same document.

27 **18. AUTHORIZATION**

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1           18.1     The undersigned hereby represent and warrant that they are authorized to execute  
2 this Agreement on behalf of the entity or individual for which they are signing and may bind that  
3 entity or individual to the promises and obligations of this Agreement.

4 **19.     COMPLIANCE WITH HEALTH AND SAFETY CODE § 25249.7(f)**

5           19.1     CAG agrees to comply with the reporting form requirements referenced in  
6 California Health and Safety Code Section 25249.7(f).

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DATED: February \_\_\_, 2016

Consumer Advocacy Group

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

DATED: February \_\_\_, 2016

The J.M. Smucker Company

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

DATED: February \_\_\_, 2016

Massimo Zanetti Beverage USA, Inc.

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

DATED: February \_\_\_, 2016

Atlantic Coffee Solutions LLC


By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

1 DATED: February 9, 2016

Consumer Advocacy Group

2 By: 

3 Print Name: Melissa Johnson

4 Title: Executive Director

6 DATED: February \_\_, 2016

The J.M. Smucker Company

8 By: \_\_\_\_\_

9 Print Name: \_\_\_\_\_

10 Title: \_\_\_\_\_

12 DATED: February \_\_, 2016

Massimo Zanetti Beverage USA, Inc.

14 By: \_\_\_\_\_

15 Print Name: \_\_\_\_\_

16 Title: \_\_\_\_\_

19 DATED: February \_\_, 2016

Atlantic Coffee Solutions LLC

21 By: \_\_\_\_\_

22 Print Name: \_\_\_\_\_

23 Title: \_\_\_\_\_

28

1 DATED: February \_\_, 2016

Consumer Advocacy Group

2

By: \_\_\_\_\_

3

Print Name: \_\_\_\_\_

4

Title: \_\_\_\_\_

5

6 DATED: February 10, 2016

The J.M. Smucker Company

7

By: Jeannette Knudsen

8

Print Name: JEANNETTE KNUDSEN

9

Title: V.P., GENERAL COUNSEL + CORPORATE SECRETARY

10

11

12 DATED: February \_\_, 2016

Massimo Zanetti Beverage USA, Inc.

13

By: \_\_\_\_\_

14

Print Name: \_\_\_\_\_

15

Title: \_\_\_\_\_

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19 DATED: February \_\_, 2016

Atlantic Coffee Solutions LLC

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By: \_\_\_\_\_

21

Print Name: \_\_\_\_\_

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Title: \_\_\_\_\_

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1 DATED: February \_\_, 2016

Consumer Advocacy Group

2 By: \_\_\_\_\_

3 Print Name: \_\_\_\_\_

4 Title: \_\_\_\_\_

5  
6 DATED: February \_\_, 2016

The J.M. Smucker Company

7 By: \_\_\_\_\_

8 Print Name: \_\_\_\_\_

9 Title: \_\_\_\_\_

10  
11 DATED: February 10, 2016

Massimo Zanetti Beverage USA, Inc.

12 By:  \_\_\_\_\_

13 Print Name: John Boyle \_\_\_\_\_

14 Title: President & CEO \_\_\_\_\_

15  
16  
17 DATED: February \_\_, 2016

Atlantic Coffee Solutions LLC

18 By: \_\_\_\_\_

19 Print Name: \_\_\_\_\_

20 Title: \_\_\_\_\_

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1 DATED: February \_\_, 2016

Consumer Advocacy Group

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By: \_\_\_\_\_

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Print Name: \_\_\_\_\_

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Title: \_\_\_\_\_

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7 DATED: February \_\_, 2016

The J.M. Smucker Company

8

By: \_\_\_\_\_

9

Print Name: \_\_\_\_\_

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Title: \_\_\_\_\_

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12

13 DATED: February \_\_, 2016

Massimo Zanetti Beverage USA, Inc.

14

By: \_\_\_\_\_

15

Print Name: \_\_\_\_\_

16

Title: \_\_\_\_\_

17

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20 DATED: February 12, 2016

Atlantic Coffee Solutions LLC

21

By: David Martinez

22

Print Name: DAVID MARTINEZ

23

Title: CEO

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**EXHIBIT A**

[60-DAY NOTICES ATTACHED]

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SIXTY-DAY NOTICE OF INTENT TO SUE FOR VIOLATION OF THE SAFE DRINKING WATER  
AND TOXIC ENFORCEMENT ACT OF 1986  
(*Cal. Health & Safety Code § 25249.5, et seq.*) ("Proposition 65")

July 14, 2014

Current President/ CEO  
Massimo Zanetti Beverage USA  
1200 Court Street  
Portsmouth, VA 23704  
Current President/ CEO  
Massimo Zanetti Beverage  
10 Empire Boulevard  
Moonachie, NJ 07074

Current President/ CEO  
Massimo Zanetti Beverage USA  
1370 Progress Road  
Suffolk, VA 23434  
Current President/ CEO  
Massimo Zanetti Beverage  
2543 Westbelt Drive  
Colombus, OH 43228

Current President/ CEO  
Massimo Zanetti Beverage USA, Inc.  
205 Lexington Avenue  
New York, NY 10016  
Ed Logan or Current President/ CEO  
Massimo Zanetti Beverage  
208 NW Business Park Lane  
Riverside, MO 64150

Current President/ CEO  
M. Zanetti Industries S.A.  
Rue Beaumont 17  
Luxembourg 1219  
LUXEMBOURG

Current President/ CEO  
M. Zanetti Industries S.A.  
Rue Beaumont 17  
Luxembourg L-1219  
LUXEMBOURG

Jim Keyes, CEO  
Or Current President/ CEO  
Fresh & Easy Neighborhood  
Foundation  
2120 Park Place, Suite 200  
El Segundo, CA 90245

Craig Beatty, President, or  
Current President/ CEO  
The Yucaipa Companies, LLC  
9130 West Sunset Boulevard  
Los Angeles, CA 90069

AND THE PUBLIC PROSECUTORS LISTED ON THE DISTRIBUTION LIST ACCOMPANYING THE  
ATTACHED CERTIFICATE OF SERVICE

Re: Violations of Proposition 65 concerning **Powdered Beverage Containing Lead**

To whom else this may concern:

**Consumer Advocacy Group, Inc.** ("CAG"), the noticing entity, located at **9903 Santa Monica Boulevard #225, Beverly Hills, California 90212**, serves this Notice of Violation ("Notice") on **Massimo Zanetti Beverage USA, Massimo Zanetti Beverage USA, Inc., Massimo Zanetti Beverage, M. Zanetti Industries S.A., Fresh & Easy Neighborhood Foundation and The Yucaipa Companies, LLC** (collectively "Violators") pursuant to and in compliance with Proposition 65. Violators may contact CAG concerning this Notice through its designated person within the entity, its attorney, Reuben Yeroushalmi 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, CA 90212, telephone no. (310) 623-1926, facsimile no. (310) 623-1930. This Notice satisfies a prerequisite for CAG to commence an action against Violators in any Superior Court of California to enforce Proposition 65. The violations addressed by this Notice occurred at numerous locations in each county in California as reflected in the district attorney addresses listed in the attached distribution list. CAG is serving this Notice upon each person or entity responsible for the alleged violations, the California Attorney General, the district attorney for each county where alleged

violations occurred, and the City Attorney for each city with a population (according to the most recent decennial census) of over 750,000 located within counties where the alleged violations occurred.

- CAG is an organization based in California. CAG is an entity dedicated to protecting the environment, improving human health, and supporting environmentally sound practices. By sending this Notice, CAG is acting “in the public interest” pursuant to Proposition 65.
- This Notice concerns violations of the warning prong of Proposition 65, which states that “[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual . . .” *Cal. Health & Safety Code* § 25249.6.
- **Powdered Beverage** contains **Lead**. CAG has discovered **Powdered Beverage** specifically **Drink Mix (“Drink Mix”)** containing **Lead**, which is known to the State of California to cause both cancer and reproductive toxicity, female, male. On February 27, 1987, the Governor of California added lead to the list of chemicals known to the State to cause reproductive toxicity in both males and females, and on October 1, 1992, the Governor added lead and lead compounds to the list of chemicals known to the State to cause cancer. Both additions took place more than twenty (20) months before CAG served this Notice.
  - An exemplar of the violations caused by **Drink Mix** includes but is not limited to:
    - **“HILLS BROS.® CAPPUCINO “Drink Mix” “French Vanilla NATURALLY AND ARTIFITIALY FLAVORED” (net wt/ peso neto 16 oz (1 lb) 453g) “Distributed by Massimo Zanetti Beverage USA” UPC.: 0 18400 31251 7”**
- This Notice addresses consumer products exposures. A “[c]onsumer products exposure” is an exposure which results from a person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service.” *Cal. Code Regs. 27 tit. § 25602(b)*.

Violators caused consumer product exposures in violation of Proposition 65 by producing or making available **Drink Mix** for distribution or sale in California to consumers. The packaging for **Drink Mix** (meaning any label or other written, printed or graphic matter affixed to or accompanying the product or its container or wrapper) contains no Proposition 65-compliant warning. Nor did Violator, with regard to **Drink Mix**, provide a system of signs, public advertising identifying the system and toll-free information services, or any other system, which provided clear and reasonable warnings. Nor did Violator, with regard to **Drink Mix**, provide identification of the product at retail outlets in a manner that provided a warning through shelf labeling, signs, menus, or a combination thereof.

These violations occurred each day between July 14, 2011 and July 14, 2014, and are ever continuing thereafter.

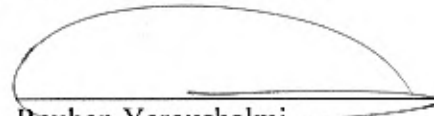
The principal routes of exposure with regard to **Drink Mix** are and were through ingestion, including hand to mouth pathways, inhalation, and trans-dermal absorption. Persons sustain exposures by consuming and/or drinking **Drink Mix**, handling **Drink Mix** without wearing gloves or any other personal protective equipment, or by touching bare skin or mucous membranes with gloves after handling **Drink Mix** as well as through direct and indirect hand to mouth contact, hand to mucous membrane, or breathing in particulate matter dispersed from **Drink Mix**.



Proposition 65 requires that notice of intent to sue be given to the violator(s) sixty (60) days before the suit is filed. *Cal. Health & Safety Code* § 25249.7(d)(1). With this letter, CAG gives notice of the alleged violations to Violator and the appropriate governmental authorities. In absence of any action by the appropriate governmental authorities within sixty (60) calendar days of the sending of this notice (plus ten (10) calendar days because the place of address is beyond the State of California but within the United States), CAG may file suit. See *Cal. Code Civ. Proc.* § 1013; *Cal. Health & Safety Code* § 25249.7(d)(1); and *Cal. Code Regs.* tit. 27 § 25903(d)(1). CAG remains open and willing to discussing the possibility of resolving its grievances short of formal litigation.

With the copy of this notice submitted to the Violators, a copy of the following is attached: The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary.

Dated: 7/14/14



Reuben Yeroushalmi  
Yeroushalmi & Associates  
Attorneys for Consumer Advocacy Group, Inc.

## 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's 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.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. The statute 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.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

<sup>1</sup> 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>

#### WHAT DOES PROPOSITION 65 REQUIRE?

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

Only those chemicals that are on the list are regulated under this law. 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; for example, when exposures are sufficiently low (see below). 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. 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 as known to the State to cause cancer (“carcinogens”), a warning is not required if the business 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 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 a 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 a Food.** Certain exposures to chemicals that occur in foods naturally (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> 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 into 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

<sup>2</sup> See Section 25501(a)(4)

cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

#### *HOW IS PROPOSITION 65 ENFORCED?*

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

#### *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](mailto:P65Public.Comments@oehha.ca.gov).

Revised: July, 2012

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

**Powdered Beverage containing Lead**


**CERTIFICATE OF MERIT**

Health and Safety Code Section 25249.7(d)

I, Reuben Yeroushalmi, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the party(s) identified in the notice(s) has violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party.
3. I have consulted with at least one person with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the action.
4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: 7/14/19

By:   
Reuben Yeroushalmi



**CERTIFICATE OF SERVICE**

I am over the age of 18 and not a party to this case. I am a resident of or employed in the county where the mailing occurred. My business address is 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, CA 90212.

ON THE DATE SHOWN BELOW, I SERVED THE FOLLOWING:

- 1) 60-Day Notice of Intent to Sue Under Health & Safety Code Section 25249.6
- 2) Certificate of Merit: Health and Safety Code Section 25249.7(d)
- 3) Certificate of Merit (Attorney General Copy): Factual information sufficient to establish the basis of the certificate of merit (*only sent to Attorney General*)
- 4) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary

by enclosing copies of the same in a sealed envelope, along with an unsigned copy of this declaration, addressed to each person shown below and depositing the envelope in the U.S. mail with the postage fully prepaid. Place of Mailing: Beverly Hills, CA

**Name and address of each party to whom documents were mailed:**

Current President/ CEO Massimo Zanetti Beverage USA 1200 Court Street Portsmouth, VA 23704	Current President/ CEO Massimo Zanetti Beverage USA 1370 Progress Road Suffolk, VA 23434	Current President/ CEO Massimo Zanetti Beverage USA, Inc. 205 Lexington Avenue New York, NY 10016
Current President/ CEO Massimo Zanetti Beverage 10 Empire Boulevard Moonachie, NJ 07074	Current President/ CEO Massimo Zanetti Beverage 2543 Westbelt Drive Colombus, OH 43228	Ed Logan or Current President/ CEO Massimo Zanetti Beverage 208 NW Business Park Lane Riverside, MO 64150
Current President/ CEO M. Zanetti Industries S.A. Rue Beaumont 17 Luxembourg 1219 LUXEMBOURG	Current President/ CEO M. Zanetti Industries S.A. Rue Beaumont 17 Luxembourg L-1219 LUXEMBOURG	Jim Keyes, CEO Or Current President/ CEO Fresh & Easy Neighborhood Foundation 2120 Park Place, Suite 200 El Segundo, CA 90245
Craig Beatty, President, or Current President/ CEO The Yucaipa Companies, LLC 9130 West Sunset Boulevard Los Angeles, CA 90069		

**Name and address of each public prosecutor to whom documents were mailed:**

See Distribution List

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

Date of Mailing: 07-16-2014

By: \_\_\_\_\_



Hya Gingoyon

## Distribution List

Alameda County District Attorney 1225 Fallon St, Room 900 Oakland, CA 94612	Los Angeles County District Attorney 210 W Temple St, 18th Floor Los Angeles, CA 90012	Mono County District Attorney PO Box 617 Bridgeport, CA 93517
Alpine County District Attorney PO Box 248 Markleeville, CA 96120	Madera County District Attorney 209 W Yosemite Ave Madera, CA 93637	San Joaquin County District Attorney PO Box 990 Stockton, CA 95201 -0990
Amador County District Attorney 708 Court, Suite 202 Jackson, CA 95642	Mariposa County District Attorney P.O. Box 730 Mariposa, CA 95338	San Francisco County District Attorney 850 Bryant St, Rm 322 San Francisco, CA 94103
Butte County District Attorney 25 County Center Dr. Oroville, CA 95965-3385	Marin County District Attorney 3501 Civic Center Drive, #130 San Rafael, CA 94903	San Diego County District Attorney 330 W Broadway, Ste 1300 San Diego, CA 92101-3803
Calaveras County District Attorney 891 Mountain Ranch Road San Andreas, CA 95249	Mendocino County District Attorney P.O. Box 1000 Ukiah, CA 95482	San Bernardino County District Attorney 316 N Mountain View Ave San Bernardino, CA 92415-0004
Office of the Attorney General P.O. Box 70550 Oakland, CA 94612-0550	Los Angeles City Attorney 200 N Main St Ste 1800 Los Angeles CA 90012	San Francisco City Attorney # 1 Dr. Carlton B. Goodlett Place, Suite 234 San Francisco, CA 94102
Colusa County District Attorney Courthouse, 547 Market St. Colusa, CA 95932	Inyo County District Attorney P.O. Drawer D Independence, CA 93526	Placer County District Attorney 10810 Justice Center Drive Suite 240 Roseville, CA 95678-6231
Contra Costa County District Attorney 725 Court St., Room 402 Martinez, CA 94553	Orange County District Attorney PO Box 808 Santa Ana, CA 92702	Merced County District Attorney 650 W. 20 <sup>th</sup> Street Merced, CA 95340
Del Norte County District Attorney 450 "I" St. Crescent City, CA 95531	Nevada County District Attorney 201 Church St, Suite 8 Nevada City, CA 95959-2504	Napa County District Attorney PO Box 720 Napa, CA 94559-0720
El Dorado County District Attorney 515 Main St. Placerville, CA 95667-5697	Plumas County District Attorney 520 Main Street, Rm 404 Quincy, CA 95971	Riverside County District Attorney 3960 Orange St. Ste. 5 Riverside, CA 92501
Fresno County District Attorney 2220 Tulare St, Ste. 1000 Fresno, CA 93721	Sacramento County District Attorney 901 G Street Sacramento, CA 95814	San Benito County District Attorney 419 4th St Hollister, CA 95023
Glenn County District Attorney PO Box 430 Willows, CA 95988	San Luis Obispo County District Attorney County Government Center, Rm 450 San Luis Obispo, CA 93408	Siskiyou County District Attorney PO Box 986 Yreka, CA 96097
Humboldt County District Attorney 825 5th St., 4 <sup>th</sup> Floor Eureka, CA 95501	San Mateo County District Attorney 400 County Center Redwood City, CA 94063	Solano County District Attorney 600 Union Ave Fairfield, CA 94533
Imperial County District Attorney 939 W. Main St., 2 <sup>nd</sup> Floor El Centro, CA 92243-2860	Santa Barbara County District Attorney 1112 Santa Barbara St. Santa Barbara, CA 93101	Sonoma County District Attorney 600 Administration Dr., Rm 212-J Santa Rosa, CA 95403
Kern County District Attorney 1215 Truxtun Ave. Bakersfield, CA 93301	Santa Clara County District Attorney 70 W Hedding St. San Jose, CA 95110	Shasta County District Attorney 1525 Court St, 3rd Floor Redding, CA 96001-1632
Kings County District Attorney Gov't Ctr, 1400 W Lacey Blvd Hanford, CA 93230	Santa Cruz County District Attorney PO Box 1159 Santa Cruz, CA 95061	Sierra County District Attorney PO Box 457 Downieville, CA 95936-0457
Lake County District Attorney 255 N Forbes St Lakeport, CA 95453-4790	Stanislaus County District Attorney PO Box 442 Modesto, CA 95353	Trinity County District Attorney PO Box 310 Weaverville, CA 96093
Modoc County District Attorney 204 S. Court Street Alturas, CA 96101-4020	Sutter County District Attorney 446 Second Street Yuba City, CA 95991	Yuba County District Attorney 215 5th St Marysville, CA 95901
San Diego City Attorney City Center Plaza 1200 3rd Ave # 1100 San Diego, CA 92101	Lassen County District Attorney 200 S Lassen St, Suite 8 Susanville, CA 96130	Monterey County District Attorney PO Box 1131 Salinas, CA 93902
Tuolumne County District Attorney 2 S Green St Sonora, CA 95370	Tulare County District Attorney County Civic Center, Rm 224 Visalia, CA 93291	Yolo County District Attorney 310 Second St Woodland, CA 95695
Ventura County District Attorney 800 S Victoria Ave Ventura, CA 93009	Tehama County District Attorney P.O. Box 519 Red Bluff, CA 96080	San Jose City Attorney 151 W. Mission St. San Jose, CA 95110

SIXTY-DAY NOTICE OF INTENT TO SUE FOR VIOLATION OF THE SAFE DRINKING WATER  
AND TOXIC ENFORCEMENT ACT OF 1986  
(*Cal. Health & Safety Code § 25249.5, et seq.*) (“Proposition 65”)

July 24, 2014

Current President/ CEO Massimo Zanetti Beverage USA 1200 Court Street Portsmouth, VA 23704	Current President/ CEO Massimo Zanetti Beverage USA 1370 Progress Road Suffolk, VA 23434	Current President/ CEO Massimo Zanetti Beverage USA, Inc. 205 Lexington Avenue New York, NY 10016
Current President/ CEO Massimo Zanetti Beverage 10 Empire Boulevard Moonachie, NJ 07074	Current President/ CEO Massimo Zanetti Beverage 2543 Westbelt Drive Colombus, OH 43228	Ed Logan or Current President/ CEO Massimo Zanetti Beverage 208 NW Business Park Lane Riverside, MO 64150
Current President/ CEO M. Zanetti Industries S.A. Rue Beaumont 17 Luxembourg 1219 LUXEMBOURG	Current President/ CEO M. Zanetti Industries S.A. Rue Beaumont 17 Luxembourg L-1219 LUXEMBOURG	Jim Keyes, CEO Or Current President/ CEO Fresh & Easy Neighborhood Foundation 2120 Park Place, Suite 200 El Segundo, CA 90245
Craig Beatty, President, or Current President/ CEO The Yucaipa Companies, LLC 9130 West Sunset Boulevard Los Angeles, CA 90069		

AND THE PUBLIC PROSECUTORS LISTED ON THE DISTRIBUTION LIST ACCOMPANYING THE  
ATTACHED CERTIFICATE OF SERVICE

Re: Violations of Proposition 65 concerning **Coffee Products Containing Lead**

To whom else this may concern:

**Consumer Advocacy Group, Inc.** (“CAG”), the noticing entity, located at **9903 Santa Monica Boulevard #225, Beverly Hills, California 90212**, serves this Notice of Violation (“Notice”) on **Massimo Zanetti Beverage USA, Massimo Zanetti Beverage USA, Inc., Massimo Zanetti Beverage, M. Zanetti Industries S.A., Fresh & Easy Neighborhood Foundation** and **The Yucaipa Companies, LLC** (collectively “Violators”) pursuant to and in compliance with Proposition 65. Violators may contact CAG concerning this Notice through its designated person within the entity, its attorney, Reuben Yeroushalmi 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, CA 90212, telephone no. (310) 623-1926, facsimile no. (310) 623-1930. This Notice satisfies a prerequisite for CAG to commence an action against Violators in any Superior Court of California to enforce Proposition 65. The violations addressed by this Notice occurred at numerous locations in each county in California as reflected in the district attorney addresses listed in the attached distribution list. CAG is serving this Notice upon each person or entity responsible for the alleged violations, the California Attorney General, the district attorney for each county where alleged violations occurred, and the City Attorney for each city with a population (according to the most recent decennial census) of over 750,000 located within counties where the alleged violations occurred.



- CAG is an organization based in California. CAG is an entity dedicated to protecting the environment, improving human health, and supporting environmentally sound practices. By sending this Notice, CAG is acting “in the public interest” pursuant to Proposition 65.
- This Notice concerns violations of the warning prong of Proposition 65, which states that “[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual . . .” *Cal. Health & Safety Code* § 25249.6.
- **Coffee Products** contains **Lead**. CAG has discovered **Coffee Products** specifically **Instant Coffee (“Coffee”)** containing **Lead**, which is known to the State of California to cause both cancer and reproductive toxicity, female, male. On February 27, 1987, the Governor of California added lead to the list of chemicals known to the State to cause reproductive toxicity in both males and females, and on October 1, 1992, the Governor added lead and lead compounds to the list of chemicals known to the State to cause cancer. Both additions took place more than twenty (20) months before CAG served this Notice.
  - An exemplar of the violations caused by **Coffee** includes but is not limited to:
    - **Hillson REGULAR INSTANT COFFEE, NET WT 7 OZ (198g), 100% COFFEE, “60503”, “Distributed by Massimo Zanetti Beverage USA Portsmouth, VA 23704”, Barcode: 5 051379 031237**
- This Notice addresses consumer products exposures. A “[c]onsumer products exposure” is an exposure which results from a person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service.” *Cal. Code Regs. 27 tit. § 25602(b)*.

Violators caused consumer product exposures in violation of Proposition 65 by producing or making available **Coffee** for distribution or sale in California to consumers. The packaging for **Coffee** (meaning any label or other written, printed or graphic matter affixed to or accompanying the product or its container or wrapper) contains no Proposition 65-compliant warning. Nor did Violator, with regard to **Coffee**, provide a system of signs, public advertising identifying the system and toll-free information services, or any other system, which provided clear and reasonable warnings. Nor did Violator, with regard to **Coffee**, provide identification of the product at retail outlets in a manner that provided a warning through shelf labeling, signs, menus, or a combination thereof.

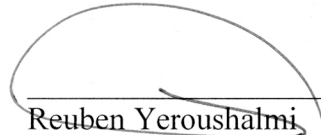
These violations occurred each day between July 24, 2011 and July 24, 2014, and are ever continuing thereafter.

The principal routes of exposure with regard to **Coffee** are and were through ingestion, including hand to mouth pathways, inhalation, and trans-dermal absorption. Persons sustain exposures by consuming and/or drinking **Coffee**, handling **Coffee** without wearing gloves or any other personal protective equipment, or by touching bare skin or mucous membranes with gloves after handling **Coffee** as well as through direct and indirect hand to mouth contact, hand to mucous membrane, or breathing in particulate matter dispersed from **Coffee**.

Proposition 65 requires that notice of intent to sue be given to the violator(s) sixty (60) days before the suit is filed. *Cal. Health & Safety Code* § 25249.7(d)(1). With this letter, CAG gives notice of the alleged violations to Violator and the appropriate governmental authorities. In absence of any action by the appropriate governmental authorities within sixty (60) calendar days of the sending of this notice (plus ten (10) calendar days because the place of address is beyond the State of California but within the United States), CAG may file suit. *See Cal. Code Civ. Proc.* § 1013; *Cal. Health & Safety Code* § 25249.7(d)(1); and *Cal. Code Regs.* tit. 27 § 25903(d)(1). CAG remains open and willing to discussing the possibility of resolving its grievances short of formal litigation.

With the copy of this notice submitted to the Violators, a copy of the following is attached: The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary.

Dated: 7/29/19

  
\_\_\_\_\_  
Reuben Yeroushalmi  
Yeroushalmi & Associates  
Attorneys for Consumer Advocacy Group, Inc.

## 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’s 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.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. The statute 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.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

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### WHAT DOES PROPOSITION 65 REQUIRE?

***The “Governor’s List.”*** Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. This means that chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

Only those chemicals that are on the list are regulated under this law. 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; for example, when exposures are sufficiently low (see below). 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. 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 as known to the State to cause cancer (“carcinogens”), a warning is not required if the business 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 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 a 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 a Food.***

Certain exposures to chemicals that occur in foods naturally (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> 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 into 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

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<sup>2</sup> See Section 25501(a)(4)

cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

#### *HOW IS PROPOSITION 65 ENFORCED?*

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

#### *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](mailto:P65Public.Comments@oehha.ca.gov).

Revised: July, 2012

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

**Coffee Products containing Lead**

**CERTIFICATE OF MERIT**

Health and Safety Code Section 25249.7(d)

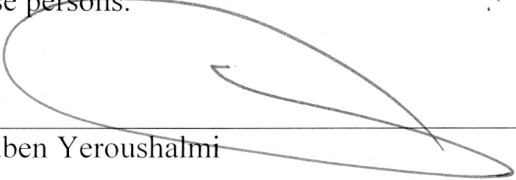
I, Reuben Yeroushalmi, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the party(s) identified in the notice(s) has violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party.
3. I have consulted with at least one person with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the action.
4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated:

July 29/14

By:

  
Reuben Yeroushalmi



**CERTIFICATE OF SERVICE**

I am over the age of 18 and not a party to this case. I am a resident of or employed in the county where the mailing occurred. My business address is 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, CA 90212.

ON THE DATE SHOWN BELOW, I SERVED THE FOLLOWING:

- 1) 60-Day Notice of Intent to Sue Under Health & Safety Code Section 25249.6
- 2) Certificate of Merit: Health and Safety Code Section 25249.7(d)
- 3) Certificate of Merit (Attorney General Copy): Factual information sufficient to establish the basis of the certificate of merit (*only sent to Attorney General*)
- 4) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary

by enclosing copies of the same in a sealed envelope, along with an unsigned copy of this declaration, addressed to each person shown below and depositing the envelope in the U.S. mail with the postage fully prepaid. Place of Mailing: Beverly Hills, CA

**Name and address of each party to whom documents were mailed:**

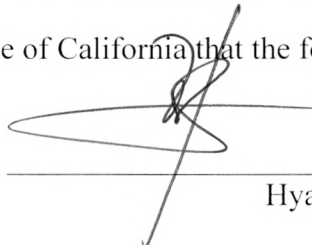
Current President/ CEO Massimo Zanetti Beverage USA 1200 Court Street Portsmouth, VA 23704	Current President/ CEO Massimo Zanetti Beverage USA 1370 Progress Road Suffolk, VA 23434	Current President/ CEO Massimo Zanetti Beverage USA, Inc. 205 Lexington Avenue New York, NY 10016
Current President/ CEO Massimo Zanetti Beverage 10 Empire Boulevard Moonachie, NJ 07074	Current President/ CEO Massimo Zanetti Beverage 2543 Westbelt Drive Colombus, OH 43228	Ed Logan or Current President/ CEO Massimo Zanetti Beverage 208 NW Business Park Lane Riverside, MO 64150
Current President/ CEO M. Zanetti Industries S.A. Rue Beaumont 17 Luxembourg 1219 LUXEMBOURG	Current President/ CEO M. Zanetti Industries S.A. Rue Beaumont 17 Luxembourg L-1219 LUXEMBOURG	Jim Keyes, CEO Or Current President/ CEO Fresh & Easy Neighborhood Foundation 2120 Park Place, Suite 200 El Segundo, CA 90245
Craig Beatty, President, or Current President/ CEO The Yucaipa Companies, LLC 9130 West Sunset Boulevard Los Angeles, CA 90069		

**Name and address of each public prosecutor to whom documents were mailed:**

See Distribution List

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

Date of Mailing: 07-24-14

By:   
\_\_\_\_\_  
Hya Gingoyon

## Distribution List

Alameda County District Attorney 1225 Fallon St, Room 900 Oakland, CA 94612	Los Angeles County District Attorney 210 W Temple St, 18th Floor Los Angeles, CA 90012	Mono County District Attorney PO Box 617 Bridgeport, CA 93517
Alpine County District Attorney PO Box 248 Markleeville, CA 96120	Madera County District Attorney 209 W Yosemite Ave Madera, CA 93637	San Joaquin County District Attorney PO Box 990 Stockton, CA 95201-0990
Amador County District Attorney 708 Court, Suite 202 Jackson, CA 95642	Mariposa County District Attorney P.O. Box 730 Mariposa, CA 95338	San Francisco County District Attorney 850 Bryant St, Rm 322 San Francisco, CA 94103
Butte County District Attorney 25 County Center Dr. Oroville, CA 95965-3385	Marin County District Attorney 3501 Civic Center Drive, #130 San Rafael, CA 94903	San Diego County District Attorney 330 W. Broadway, Ste 1300 San Diego, CA 92101-3803
Calaveras County District Attorney 891 Mountain Ranch Road San Andreas, CA 95249	Mendocino County District Attorney P.O. Box 1000 Ukiah, CA 95482	San Bernardino County District Attorney 316 N Mountain View Ave San Bernardino, CA 92415-0004
Office of the Attorney General P.O. Box 70550 Oakland, CA 94612-0550	Los Angeles City Attorney 200 N Main St Ste 1800 Los Angeles CA 90012	San Francisco City Attorney # 1 Dr. Carlton B. Goodlett Place, Suite 234 San Francisco, CA 94102
Colusa County District Attorney Courthouse, 547 Market St. Colusa, CA 95932	Inyo County District Attorney P.O. Drawer D Independence, CA 93526	Placer County District Attorney 10810 Justice Center Drive Suite 240 Roseville, CA 95678-6231
Contra Costa County District Attorney 725 Court St., Room 402 Martinez, CA 94553	Orange County District Attorney PO Box 808 Santa Ana, CA 92702	Merced County District Attorney 650 W. 20 <sup>th</sup> Street Merced, CA 95340
Del Norte County District Attorney 450 "H" St. Crescent City, CA 95531	Nevada County District Attorney 201 Church St, Suite 8 Nevada City, CA 95959-2504	Napa County District Attorney PO Box 720 Napa, CA 94559-0720
El Dorado County District Attorney 515 Main St. Placerville, CA 95667-5697	Plumas County District Attorney 520 Main Street, Rm 404 Quincy, CA 95971	Riverside County District Attorney 3960 Orange St. Ste. 5 Riverside, CA 92501
Fresno County District Attorney 2220 Tulare St, Ste. 1000 Fresno, CA 93721	Sacramento County District Attorney 901 G Street Sacramento, CA 95814	San Benito County District Attorney 419 4th St Hollister, CA 95023
Glenn County District Attorney PO Box 430 Willows, CA 95988	San Luis Obispo County District Attorney County Government Center, Rm 450 San Luis Obispo, CA 93408	Siskiyou County District Attorney PO Box 986 Yreka, CA 96097
Humboldt County District Attorney 825 5th St., 4 <sup>th</sup> Floor Eureka, CA 95501	San Mateo County District Attorney 400 County Center Redwood City, CA 94063	Solano County District Attorney 600 Union Ave Fairfield, CA 94533
Imperial County District Attorney 939 W. Main St., 2 <sup>nd</sup> Floor El Centro, CA 92243-2860	Santa Barbara County District Attorney 1112 Santa Barbara St. Santa Barbara, CA 93101	Sonoma County District Attorney 600 Administration Dr., Rm 212-J Santa Rosa, CA 95403
Kern County District Attorney 1215 Truxtun Ave. Bakersfield, CA 93301	Santa Clara County District Attorney 70 W Hedding St. San Jose, CA 95110	Shasta County District Attorney 1525 Court St, 3rd Floor Redding, CA 96001-1632
Kings County District Attorney Gov't Ctr, 1400 W Lacey Blvd Hanford, CA 93230	Santa Cruz County District Attorney PO Box 1159 Santa Cruz, CA 95061	Sierra County District Attorney PO Box 457 Downieville, CA 95936-0457
Lake County District Attorney 255 N Forbes St Lakeport, CA 95453-4790	Stanislaus County District Attorney PO Box 442 Modesto, CA 95353	Trinity County District Attorney PO Box 310 Weaverville, CA 96093
Modoc County District Attorney 204 S. Court Street Alturas, CA 96101-4020	Sutter County District Attorney 446 Second Street Yuba City, CA 95991	Yuba County District Attorney 215 5th St Marysville, CA 95901
San Diego City Attorney City Center Plaza 1200 3rd Ave # 1100 San Diego, CA 92101	Lassen County District Attorney 200 S Lassen St, Suite 8 Susanville, CA 96130	Monterey County District Attorney PO Box 1131 Salinas, CA 93902
Tuolumne County District Attorney 2 S Green St Sonora, CA 95370	Tulare County District Attorney County Civic Center, Rm 224 Visalia, CA 93291	Yolo County District Attorney 310 Second St Woodland, CA 95695
Ventura County District Attorney 800 S Victoria Ave Ventura, CA 93009	Tehama County District Attorney P.O. Box 519 Red Bluff, CA 96080	San Jose City Attorney 151 W. Mission St. San Jose, CA 95110



SIXTY-DAY NOTICE OF INTENT TO SUE FOR VIOLATION OF THE SAFE DRINKING WATER  
AND TOXIC ENFORCEMENT ACT OF 1986

(*Cal. Health & Safety Code* § 25249.5, *et seq.*) (“Proposition 65”)

July 24, 2014

Jose Souto, President, or  
Current President/CEO  
Rowland Coffee Roasters, Inc.  
1 Strawberry Lane  
Orrville, OH 44667

Timothy Smucker, CEO, or  
Current President/CEO  
The J.M. Smucker Company  
1 Strawberry Lane  
Orrville, OH 44667-0280

Craig Beatty, President, or  
Current President/CEO  
The Yucaipa Companies, LLC  
9130 West Sunset Boulevard  
Los Angeles, CA 90069

Jim Keyes, CEO, or  
Or Current President/CEO  
Fresh & Easy Neighborhood  
Foundation  
2120 Park Place, Suite 200  
El Segundo, CA 90245

AND THE PUBLIC PROSECUTORS LISTED ON THE DISTRIBUTION LIST ACCOMPANYING THE  
ATTACHED CERTIFICATE OF SERVICE

Re: Violations of Proposition 65 concerning **Coffee Products Containing Lead**

To whom else this may concern:

**Consumer Advocacy Group, Inc.** (“CAG”), the noticing entity, located at **9903 Santa Monica Boulevard #225, Beverly Hills, California 90212**, serves this Notice of Violation (“Notice”) on Rowland Coffee Roasters, Inc., The J.M. Smucker Company, The Yucaipa Companies, LLC, and Fresh & Easy Neighborhood Foundation, (collectively “Violators”) pursuant to and in compliance with Proposition 65. Violators may contact CAG concerning this Notice through its designated person within the entity, its attorney, Reuben Yeroushalmi 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, CA 90212, telephone no. (310) 623-1926, facsimile no. (310) 623-1930. This Notice satisfies a prerequisite for CAG to commence an action against Violators in any Superior Court of California to enforce Proposition 65. The violations addressed by this Notice occurred at numerous locations in each county in California as reflected in the district attorney addresses listed in the attached distribution list. CAG is serving this Notice upon each person or entity responsible for the alleged violations, the California Attorney General, the district attorney for each county where alleged violations occurred, and the City Attorney for each city with a population (according to the most recent decennial census) of over 750,000 located within counties where the alleged violations occurred.

- CAG is an organization based in California. CAG is an entity dedicated to protecting the environment, improving human health, and supporting environmentally sound practices. By sending this Notice, CAG is acting “in the public interest” pursuant to Proposition 65.
- This Notice concerns violations of the warning prong of Proposition 65, which states that “[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual . . .” *Cal. Health & Safety Code* § 25249.6.

- CAG has discovered **Coffee Products** specifically **Instant Espresso Coffee (“Coffee”)** containing **Lead** which is known to the State of California to cause both cancer and reproductive toxicity, female, male. On February 27, 1987, the Governor of California added lead to the list of chemicals known to the State to cause reproductive toxicity in both males and females, and on October 1, 1992, the Governor added lead and lead compounds to the list of chemicals known to the State to cause cancer. Both took place more than twenty (20) months before CAG served this Notice.
  - An exemplar of the violations caused by **Coffee** includes but is not limited to:
    - **MEDAGLIA D’ORO® INSTANT ESPRESSO COFFEE, NET WT 2 OZ. (57 g), “DISTRIBUTED BY ROWLAND COFFEE ROASTERS, INC.”**  
**BARCODE: 0 74471 00091 3**
- This Notice addresses consumer products exposures. A “[c]onsumer products exposure’ is an exposure which results from a person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service.” *Cal. Code Regs. 27 tit. § 25602(b)*.

Violators caused consumer product exposures in violation of Proposition 65 by producing or making available **Coffee** for distribution or sale in California to consumers. The packaging for **Coffee** (meaning any label or other written, printed or graphic matter affixed to or accompanying the product or its container or wrapper) contains no Proposition 65-compliant warning. Nor did Violators, with regard to **Coffee**, provide a system of signs, public advertising identifying the system and toll-free information services, or any other system, which provided clear and reasonable warnings. Nor did Violators, with regard to **Coffee**, provide identification of the product at retail outlets in a manner that provided a warning through shelf labeling, signs, menus, or a combination thereof.

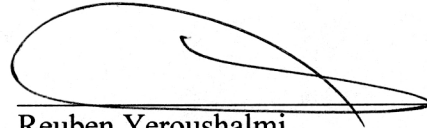
These violations occurred each day between July 24, 2011, and July 24, 2014, and are ever continuing thereafter.

The principal routes of exposure with regard to **Coffee** are and were through ingestion, including hand to mouth pathways, inhalation, and trans-dermal absorption. Persons sustain exposures by consuming and/or drinking **Coffee**, handling **Coffee** without wearing gloves or any other personal protective equipment, or by touching bare skin or mucous membranes with gloves after handling **Coffee** as well as through direct and indirect hand to mouth contact, hand to mucous membrane, or breathing in particulate matter dispersed from **Coffee**.

Proposition 65 requires that notice of intent to sue be given to the violator(s) sixty (60) days before the suit is filed. *Cal. Health & Safety Code § 25249.7(d)(1)*. With this letter, CAG gives notice of the alleged violations to Violators and the appropriate governmental authorities. In absence of any action by the appropriate governmental authorities within sixty (60) calendar days of the sending of this notice (plus ten (10) calendar days because the place of address is beyond the State of California but within the United States), CAG may file suit. *See Cal. Code Civ. Proc. § 1013; Cal. Health & Safety Code § 25249.7(d)(1); and Cal. Code Regs. tit. 27 § 25903(d)(1)*. CAG remains open and willing to discussing the possibility of resolving its grievances short of formal litigation.

With the copy of this notice submitted to the Violators, a copy of the following is attached: The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary.

Dated: July 29/14



Reuben Yeroushalmi  
Yeroushalmi & Associates  
Attorneys for Consumer Advocacy Group, Inc.

**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’s 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.

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**WHAT DOES PROPOSITION 65 REQUIRE?**

***The “Governor’s List.”*** Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. This means that chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

Only those chemicals that are on the list are regulated under this law. 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; for example, when exposures are sufficiently low (see below). 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. 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 as known to the State to cause cancer (“carcinogens”), a warning is not required if the business 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 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 a 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 a Food.*** Certain exposures to chemicals that occur in foods naturally (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> 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 into 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

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<sup>2</sup> See Section 25501(a)(4)



cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

*HOW IS PROPOSITION 65 ENFORCED?*

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

*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](mailto:P65Public.Comments@oehha.ca.gov).

Revised: July, 2012

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

**Coffee containing Lead**

**CERTIFICATE OF MERIT**

Health and Safety Code Section 25249.7(d)

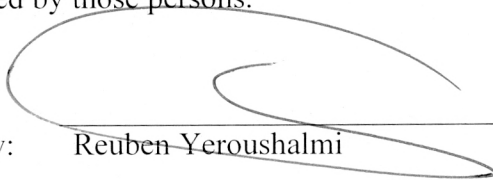
I, Reuben Yeroushalmi, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the party(s) identified in the notice(s) has violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party.
3. I have consulted with at least one person with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the action.
4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated:

July 29/14

By:

  
Reuben Yeroushalmi

**CERTIFICATE OF SERVICE**

I am over the age of 18 and not a party to this case. I am a resident of or employed in the county where the mailing occurred. My business address is 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, CA 90212.

ON THE DATE SHOWN BELOW, I SERVED THE FOLLOWING:

- 1) 60-Day Notice of Intent to Sue Under Health & Safety Code Section 25249.6
- 2) Certificate of Merit: Health and Safety Code Section 25249.7(d)
- 3) Certificate of Merit (Attorney General Copy): Factual information sufficient to establish the basis of the certificate of merit (*only sent to Attorney General*)
- 4) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary

by enclosing copies of the same in a sealed envelope, along with an unsigned copy of this declaration, addressed to each person shown below and depositing the envelope in the U.S. mail with the postage fully prepaid. Place of Mailing: Beverly Hills, CA

**Name and address of each party to whom documents were mailed:**

Jose Souto, President, or  
Current President/CEO  
Rowland Coffee Roasters, Inc.  
1 Strawberry Lane  
Orrville, OH 44667

Timothy Smucker, CEO, or  
Current President/CEO  
The J.M. Smucker Company  
1 Strawberry Lane  
Orrville, OH 44667-0280

Craig Beatty, President, or  
Current President/CEO  
The Yucaipa Companies, LLC  
9130 West Sunset Boulevard  
Los Angeles, CA 90069

Jim Keyes, CEO, or  
Or Current President/CEO  
Fresh & Easy Neighborhood  
Foundation  
2120 Park Place, Suite 200  
El Segundo, CA 90245

**Name and address of each public prosecutor to whom documents were mailed:**

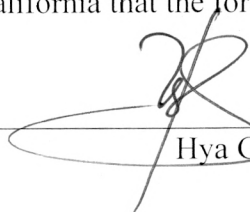
See Distribution List

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

Date of Mailing:

07-24-14

By:

  
\_\_\_\_\_  
Hya Gingoyon



## Distribution List

Alameda County District Attorney 1225 Fallon St, Room 900 Oakland, CA 94612	Los Angeles County District Attorney 210 W Temple St, 18th Floor Los Angeles, CA 90012	Mono County District Attorney PO Box 617 Bridgeport, CA 93517
Alpine County District Attorney PO Box 248 Markleeville, CA 96120	Madera County District Attorney 209 W Yosemite Ave Madera, CA 93637	San Joaquin County District Attorney PO Box 990 Stockton, CA 95201 -0990
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Ventura County District Attorney 800 S Victoria Ave Ventura, CA 93009	Tehama County District Attorney P.O. Box 519 Red Bluff, CA 96080	San Jose City Attorney 151 W. Mission St. San Jose, CA 95110

SIXTY-DAY NOTICE OF INTENT TO SUE FOR VIOLATION OF THE SAFE DRINKING WATER  
AND TOXIC ENFORCEMENT ACT OF 1986

(*Cal. Health & Safety Code § 25249.5, et seq.*) ("Proposition 65")

August 22, 2014

Current President/ CEO  
Maximus Coffee Group LP  
3900 Harrisburg Blvd.  
Houston, TX 77002

Current President/ CEO  
Maximus Coffee Group LP  
3906 Harrisburg Blvd.  
Houston, TX 77003

AND THE PUBLIC PROSECUTORS LISTED ON THE DISTRIBUTION LIST ACCOMPANYING THE  
ATTACHED CERTIFICATE OF SERVICE

Re: **Violations of Proposition 65 concerning Coffee Products Containing Lead**

To whom else this may concern:

**Consumer Advocacy Group, Inc.** ("CAG"), the noticing entity, located at **9903 Santa Monica Boulevard #225, Beverly Hills, California 90212**, serves this Notice of Violation ("Notice") on Maximus Coffee Group LP ("Violator") pursuant to and in compliance with Proposition 65. Violator may contact CAG concerning this Notice through its designated person within the entity, its attorney, Reuben Yeroushalmi 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, CA 90212, telephone no. (310) 623-1926, facsimile no. (310) 623-1930. This Notice satisfies a prerequisite for CAG to commence an action against Violator in any Superior Court of California to enforce Proposition 65. The violations addressed by this Notice occurred at numerous locations in each county in California as reflected in the district attorney addresses listed in the attached distribution list. CAG is serving this Notice upon each person or entity responsible for the alleged violations, the California Attorney General, the district attorney for each county where alleged violations occurred, and the City Attorney for each city with a population (according to the most recent decennial census) of over 750,000 located within counties where the alleged violations occurred.

- CAG is an organization based in California. CAG is an entity dedicated to protecting the environment, improving human health, and supporting environmentally sound practices. By sending this Notice, CAG is acting "in the public interest" pursuant to Proposition 65.
- This Notice concerns violations of the warning prong of Proposition 65, which states that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual . . ." *Cal. Health & Safety Code § 25249.6*.
- CAG has discovered **Coffee Products** specifically **Instant Coffee ("Coffee")** containing **Lead** which is known to the State of California to cause both cancer and reproductive toxicity, female, male. On February 27, 1987, the Governor of California added lead to the list of chemicals known to the State to cause reproductive toxicity in both males and females, and on October 1, 1992, the Governor added lead and lead compounds to the list of chemicals known to the State to cause cancer. Both took place more than twenty (20) months before CAG served this Notice.

- An exemplar of the violations caused by **Coffee** includes but is not limited to:

- “Nice!<sup>TM</sup> ORIGINAL ROAST {INSTANT COFFEE} MEDIUM, “NET WT 8 OZ (227g)”, “WIC 434097”, Barcode: 0 49022 55794 9”

- This Notice addresses consumer products exposures. A “[c]onsumer products exposure’ is an exposure which results from a person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service.” *Cal. Code Regs. 27 tit. § 25602(b)*.

Violator caused consumer product exposures in violation of Proposition 65 by producing or making available **Coffee** for distribution or sale in California to consumers. The packaging for **Coffee** (meaning any label or other written, printed or graphic matter affixed to or accompanying the product or its container or wrapper) contains no Proposition 65-compliant warning. Nor did Violator, with regard to **Coffee**, provide a system of signs, public advertising identifying the system and toll-free information services, or any other system, which provided clear and reasonable warnings. Nor did Violator, with regard to **Coffee**, provide identification of the product at retail outlets in a manner that provided a warning through shelf labeling, signs, menus, or a combination thereof.

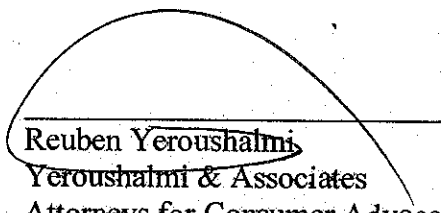
These violations occurred each day between August 22, 2011, and August 22, 2014, and are ever continuing thereafter.

The principal routes of exposure with regard to **Coffee** are and were through ingestion, including hand to mouth pathways, inhalation, and trans-dermal absorption. Persons sustain exposures by consuming and/or drinking **Coffee**, handling **Coffee** without wearing gloves or any other personal protective equipment, or by touching bare skin or mucous membranes with gloves after handling **Coffee** as well as through direct and indirect hand to mouth contact, hand to mucous membrane, or breathing in particulate matter dispersed from **Coffee**.

Proposition 65 requires that notice of intent to sue be given to the violator(s) sixty (60) days before the suit is filed. *Cal. Health & Safety Code § 25249.7(d)(1)*. With this letter, CAG gives notice of the alleged violations to Violator and the appropriate governmental authorities. In absence of any action by the appropriate governmental authorities within sixty (60) calendar days of the sending of this notice (plus ten (10) calendar days because the place of address is beyond the State of California but within the United States), CAG may file suit. *See Cal. Code Civ. Proc. § 1013; Cal. Health & Safety Code § 25249.7(d)(1); and Cal. Code Regs. tit. 27 § 25903(d)(1)*. CAG remains open and willing to discussing the possibility of resolving its grievances short of formal litigation.

With the copy of this notice submitted to the Violator, a copy of the following is attached: The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary.

Dated: 8/22/14

  
Reuben Yeroushalmi  
Yeroushalmi & Associates  
Attorneys for Consumer Advocacy Group, Inc.

**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's 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.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. The statute 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.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

<sup>1</sup> 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>

**WHAT DOES PROPOSITION 65 REQUIRE?**

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

Only those chemicals that are on the list are regulated under this law. 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; for example, when exposures are sufficiently low (see below). 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. 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 as known to the State to cause cancer ("carcinogens"), a warning is not required if the business 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 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 a 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 a Food.*** Certain exposures to chemicals that occur in foods naturally (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> 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 into 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

<sup>2</sup> See Section 25501(a)(4)

cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

#### *HOW IS PROPOSITION 65 ENFORCED?*

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

#### *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](mailto:P65Public.Comments@oehha.ca.gov).

Revised: July, 2012

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

**Coffee containing Lead**

**CERTIFICATE OF MERIT**

Health and Safety Code Section 25249.7(d)

I, Reuben Yeroushalmi, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the party(s) identified in the notice(s) has violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party.
3. I have consulted with at least one person with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the action.
4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated:

8/22/14

By:

Reuben Yeroushalmi

**CERTIFICATE OF SERVICE**

I am over the age of 18 and not a party to this case. I am a resident of or employed in the county where the mailing occurred. My business address is 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, CA 90212.

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Maximus Coffee Group LP  
3900 Harrisburg Blvd.  
Houston, TX 77002

Current President/ CEO  
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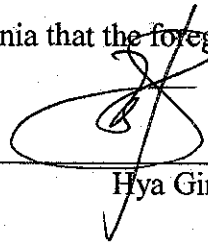
See Distribution List

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

Date of Mailing: \_\_\_\_\_

8-26-14

By: \_\_\_\_\_



Hya Gingoyon



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Alameda County District Attorney 1225 Fallon St, Room 900 Oakland, CA 94612	Los Angeles County District Attorney 210 W Temple St, 18th Floor Los Angeles, CA 90012	Mono County District Attorney PO Box 617 Bridgeport, CA 93517
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San Diego City Attorney City Center Plaza 1200 3rd Ave # 1100 San Diego, CA 92101	Lassen County District Attorney 200 S Lassen St, Suite 8 Susanville, CA 96130	Monterey County District Attorney PO Box 1131 Salinas, CA 93902
Tuolumne County District Attorney 2 S Green St Sonora, CA 95370	Tulare County District Attorney County Civic Center, Rm 224 Visalia, CA 93291	Yolo County District Attorney 310 Second St Woodland, CA 95695
Ventura County District Attorney 800 S Victoria Ave Ventura, CA 93009	Tehama County District Attorney P.O. Box 519 Red Bluff, CA 96080	San Jose City Attorney 151 W. Mission St. San Jose, CA 95110

**EXHIBIT B**

SECTION 5 PAYMENT ALLOCATIONS

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3 1. J.M. Smucker Company:

4 Total payment of \$36,000 allocated as follows:

- 5 a. Civil Penalty Payment: \$5,000 (\$3,750 to OEHHA, \$1,250 to CAG)  
6 b. Separate payment to CAG: \$5,000  
7 c. Attorney fee and cost reimbursement payment: \$26,000

8 2. Massimo Zanetti Beverage USA:

9 Total payment of \$36,000 allocated as follows:

- 10 a. Civil Penalty Payment: \$5,000 (\$3,750 to OEHHA, \$1,250 to CAG)  
11 b. Separate payment to CAG: \$5,000  
12 c. Attorney fee and cost reimbursement payment: \$26,000

13 3. Atlantic Coffee Solutions:

14 Total payment of \$36,000 allocated as follows:

- 15 a. Civil Penalty Payment: \$5,000 (\$3,750 to OEHHA, \$1,250 to CAG)  
16 b. Separate payment to CAG: \$5,000  
17 c. Attorney fee and cost reimbursement payment: \$26,000

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