

# 60-DAY NOTICE OF VIOLATION

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

---

DATE: November 25, 2014

TO: Michael Ellis, President – The Kroger Co.  
California Attorney General’s Office;  
District Attorney’s Office for 58 Counties; and  
City Attorneys for San Francisco, San Diego, San Jose, Sacramento and Los Angeles

FROM: Anthony E. Held, Ph.D., P.E.

---

## I. INTRODUCTION

---

My name is Anthony E. Held. I hold a Doctor of Philosophy degree in Environmental Engineering and I am a registered professional engineer in the State of California. I am a citizen of the State of California acting in the interest of the general public. I seek to promote awareness of exposures to toxic chemicals in products sold in California and, if possible, to improve human health by reducing hazardous substances contained in such items. This Notice is provided to the public agencies listed above pursuant to California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”). As noted above, notice is also being provided to the alleged violator, The Kroger Co. (the “Violator”). The violations covered by this Notice consist of the product exposures, routes of exposure, and type of harm potentially resulting from exposure to the toxic chemical (“listed chemical”) identified below, as follows:

Product Exposure: See Section VII. Exhibit A  
Listed Chemical: Benzophenone  
Routes of Exposure: Ingestion, Dermal  
Type of Harm: Cancer

---

## II. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

---

The specific type of product that is causing consumer and occupational exposures in violation of Proposition 65, and that is covered by this Notice, is listed under “Product Category/Type” in Exhibit A in Section VII below. All products within the category covered by this Notice shall be referred to hereinafter as the “products.” Exposures to the listed chemical from the use of the products have been occurring without the clear and reasonable warning required by Proposition 65, dating as far back as June 22, 2013. Without proper warnings regarding the toxic effects of exposures to the listed chemical resulting from contact with the products, California citizens lack the information necessary to make informed decisions on whether and how to eliminate (or reduce) the risk of exposure to the listed chemical from the reasonably foreseeable use of the products.

California consumers and other individuals, through the act of buying, acquiring, utilizing, applying, or wearing the products, are exposed to the listed chemical. By way of example but not limitation, exposures occur when California citizens use, apply, wear or otherwise handle the products. These acts cause consumers and other individuals to be exposed to the listed chemical through the routine use of all or a portion of the products containing the listed chemical. Additionally, exposure can occur through the routine touching and ingesting of other materials that are contaminated with the listed chemical from the products as a result of these tasks. People likely to be exposed include both children and adults.

---

### III. CONTACT INFORMATION

---

Please direct all questions concerning this notice to me through my counsel's office at the following address:

Anthony E. Held, Ph.D., P.E.  
c/o Josh Voorhees  
The Chanler Group  
Parker Plaza  
2560 Ninth Street, Suite 214  
Berkeley, CA 94710  
Telephone: (510) 848-8880

---

### IV. PROPOSITION 65 INFORMATION

---

For general information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health Hazard Assessment's ("OEHHA") Proposition 65 Implementation Office at (916) 445-6900. For the Violator's reference, I have attached a copy of "Proposition 65: A Summary" which has been prepared by OEHHA.

---

### V. RESOLUTION OF NOTICED CLAIMS

---

Based on the allegations set forth in this Notice, I intend to file a citizen enforcement lawsuit against the alleged Violator unless such Violator enters into a binding written agreement to: (1) recall products already sold or undertake best efforts to ensure that the requisite health hazard warnings are provided to those whom have received such products; (2) provide clear and reasonable warnings for products sold in the future or reformulate such products to eliminate the exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health & Safety Code § 25249.7(b). If the alleged Violator is interested in resolving this dispute without resort to time-consuming and expensive litigation, please feel free to contact my counsel identified in Section III above. It should be noted that neither my counsel nor I can: (1) finalize any settlement until after the 60-day notice period has expired; nor (2) speak for the Attorney General or any district or city attorney who received this Notice. Therefore, while reaching an agreement with me will resolve my claims, such agreement may not satisfy the public prosecutors.

---

**VI. ADDITIONAL NOTICE INFORMATION**

---

Identified below is a specific example of a product recently purchased and witnessed as being available for purchase or use in California that is within the category or type of offending product covered by this Notice. Based on publicly available information, the retailers, distributors and/or manufacturers of the example within the category or type of product are also provided below. I believe and allege that the sale of the offending products also has occurred without the requisite Proposition 65 “clear and reasonable warning” at one or more locations and/or via other means including, but not limited to, transactions made over-the-counter, business-to-business, through the internet and/or via a catalog by the Violator.

<i>Product*</i>	<i>Retailer(s)</i>	<i>Manufacturer(s)/Distributor(s)</i>
Kroger Sport Sunscreen Broad Spectrum SPF 30, UPC #0 41260 35981 1	Foods Co.; The Kroger Co. Sacramento County, Northern California	Dillon Companies, Inc.; The Kroger Co.

---

**VII. EXHIBIT A**

---

<i>Product Category/Type</i>	<i>Such As*</i>	<i>Toxins</i>
Sunscreen	Kroger Sport Sunscreen Broad Spectrum SPF 30, UPC #0 41260 35981 1	Benzophenone

\*The specifically identified example of the type of product that is subject to this Notice are for the recipient’s benefit to assist in its investigation of, among other things, the magnitude of potential exposures to the listed chemical from other items within the product category/type listed in Exhibit A. It is important to note that this example is not meant to be an exhaustive or comprehensive identification of each specific offending product of the type listed under “Product Category/Type” in Exhibit A. Further, it is this citizen’s position that the alleged Violator is obligated to continue to conduct in good faith an investigation into other specific products within the type or category described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipient’s custody or control) during the relevant period so as to ensure that the requisite toxic warnings were and are provided to California citizens prior to purchase.

# PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury:

I am over the age of 18 years, and not a party to the within action; my business address is Parker Plaza, 2560 Ninth Street, Suite 214, Berkeley, CA 94710.

On November 25, 2014, I served the following documents:

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

**PROPOSITION 65: A SUMMARY;**

**CERTIFICATE OF MERIT; AND**

**CERTIFICATE OF MERIT ATTACHMENTS (SERVED ONLY ON THE  
ATTORNEY GENERAL)**

on the entity listed below via First Class Certified Mail through the United States Postal Service by placing a true and correct copy in a sealed envelope, addressed to the entity listed below and providing such envelope to a United States Postal Service Representative:

Michael Ellis, President  
The Kroger Co.  
1014 Vine Street  
Cincinnati, OH 45202

as well as by providing copies of the above documents electronically uploaded to the public enforcers according to directions from their respective offices, and/or by placing a true and correct copy in a sealed envelope, addressed to each party listed below, and served as follows:

<i>Electronically Uploaded to the Attorney General's website:</i>	The Attorney General of the State of California;
<i>By placing each envelope in a United States Postal Service mailbox, postage prepaid:</i>	The District Attorney for Each of the 58 counties in California; and  The City Attorney for Los Angeles, San Diego, San Jose, San Francisco and Sacramento

*A list of addresses for each of these recipients is attached.*

Executed on November 25, 2014, at Berkeley, California.



---

Caroline Pak

# CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Clifford A. Chanler, hereby declare:

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

Dated: November 25, 2014



---

Clifford A. Chanler

# SERVICE LIST

The Honorable Nancy O'Malley  
Alameda County District Attorney  
1225 Fallon Street, Room 900  
Oakland, CA 94612

The Honorable Terese Drabec  
Alpine County District Attorney  
270 Laramie Street, PO BOX 248  
Markleeville, CA 96120

The Honorable Todd Riebe  
Amador County District Attorney  
708 Court Street  
Jackson, CA 95642

The Honorable Michael Ramsey  
Butte County District Attorney  
25 County Center Drive  
Orville, CA 95965

The Honorable Barbara Yook  
Calaveras County District Attorney  
891 Mountain Ranch Road  
San Andreas, CA 95249

The Honorable John R. Poyner  
Colusa County District Attorney  
346 Fifth Street  
Colusa, CA 95932

The Honorable Mark Peterson  
Contra Costa County District Attorney  
900 Ward Street  
Martinez, CA 94553

The Honorable Jon Alexander  
Del Norte County District Attorney  
981 H Street  
Crescent City, CA 95531

The Honorable Vernon Pierson  
El Dorado County District Attorney  
515 Main Street  
Placerville, CA 95667

The Honorable Elizabeth Egan  
Fresno County District Attorney  
2220 Tulare Street, #1000  
Fresno, CA 93721

The Honorable Robert Maloney  
Glenn County District Attorney  
P.O. Box 430  
Willows, CA 95988

The Honorable Paul Gallegos  
Humboldt County District Attorney  
825 5<sup>th</sup> Street  
Eureka, CA 95501

The Honorable Gilbert Otero  
Imperial County District Attorney  
940 West Main Street, Suite 102  
El Centro, CA 92243

The Honorable Arthur Maillet  
Inyo County District Attorney  
P.O. Drawer D  
Independence, CA 93526

The Honorable Lisa Green  
Kern County District Attorney  
1215 Truxtun Avenue  
Bakersfield, CA 93301

The Honorable Greg Strickland  
Kings County District Attorney  
1400 West Lacey Boulevard  
Hanford, CA 93230

The Honorable Donald Anderson  
Lake County District Attorney  
255 North Forbes Street  
Lakeport, CA 95453

The Honorable Robert Burns  
Lassen County District Attorney  
220 S. Lassen Street, Ste. 8  
Susanville, CA 96130

The Honorable Steve Cooley  
Los Angeles County District Attorney  
210 West Temple Street, Suite 18000  
Los Angeles, CA 90012

The Honorable Michael Keitz  
Madera County District Attorney  
209 West Yosemite Avenue  
Madera, CA 93637

The Honorable Edward Berberian  
Marin County District Attorney  
3501 Civic Center Drive, Room 130  
San Rafael, CA 94903

The Honorable Robert Brown  
Mariposa County District Attorney  
5101 Jones Street, P.O. Box 730  
Mariposa, CA 95338

The Honorable C. David Eyster  
Mendocino County District Attorney  
P.O. Box 1000  
Ukiah, CA 95482

The Honorable Larry Morse II  
Merced County District Attorney  
550 W. Main Street  
Merced, CA 95340

The Honorable Gary Woolverton  
Modoc County District Attorney  
204 S. Court Street, Room 202  
Alturas, CA 96101

The Honorable George Booth  
Mono County District Attorney  
P.O. Box 617  
Bridgeport, CA 93517

The Honorable Dean Flippo  
Monterey County District Attorney  
P.O. Box 1131  
Salinas, CA 93902

The Honorable Gary Lieberstein  
Napa County District Attorney  
P.O. Box 720  
Napa, CA 94559

The Honorable Clifford Newell  
Nevada County District Attorney  
201 Commercial Street  
Nevada City, CA 95959

The Honorable Tony Rackauckas  
Orange County District Attorney  
401 Civic Center Drive West  
Santa Ana, CA 92701

The Honorable Ronald Owens  
Placer County District Attorney  
10810 Justice Center Drive, Suite 240  
Roseville, CA 95678

The Honorable David Hollister  
Plumas County District Attorney  
520 Main Street, Room 404  
Quincy, CA 95971

The Honorable Paul Zellerbach  
Riverside County District Attorney  
3960 Orange Street  
Riverside, CA 92501

The Honorable Jan Scully  
Sacramento County District Attorney  
901 G Street  
Sacramento, CA 95814

The Honorable Candice Hooper  
San Benito County District Attorney  
419 4<sup>th</sup> Street, Second Floor  
Hollister, CA 95203

The Honorable Michael Ramos  
San Bernardino County District Attorney  
316 N. Mountain View Avenue  
San Bernardino, CA 92415

The Honorable Bonnie Dumanis  
San Diego County District Attorney  
330 W. Broadway Street  
San Diego, CA 92101

The Honorable George Gascon  
San Francisco County District Attorney  
850 Bryant Street, Room 322  
San Francisco, CA 94103

The Honorable James Willett  
San Joaquin County District Attorney  
P.O. Box 990  
Stockton, CA 95201

The Honorable Gerald Shea  
San Luis Obispo County District Attorney  
1035 Palm Street  
San Luis Obispo, CA 93408

The Honorable Stephen Wagstaffe  
San Mateo County District Attorney  
400 County Center, Third Floor  
Redwood City, CA 94063

The Honorable Joyce Dudley  
Santa Barbara County District Attorney  
1112 Santa Barbara Street  
Santa Barbara, CA 93101

The Honorable Jeffrey Rosen  
Santa Clara County District Attorney  
70 West Hedding Street, West Wing  
San Jose, CA 95110

The Honorable Bob Lee  
Santa Cruz County District Attorney  
701 Ocean Street, Room 200  
Santa Cruz, CA 95060

The Honorable Stephen Carlton  
Shasta County District Attorney  
1355 West Street  
Redding, CA 96001

The Honorable Lawrence Allen  
Sierra County District Attorney  
100 Courthouse Square, Second Floor  
Downieville, CA 95936

The Honorable James Kirk Andrus  
Siskiyou County District Attorney  
P.O. Box 986  
Yreka, CA 96097

The Honorable Donald A. du Bain  
Solano County District Attorney  
675 Texas Street, Suite 4500  
Fairfield, CA 94533

The Honorable Jill Ravitch  
Sonoma County District Attorney  
600 Administration Drive, Room 212J  
Santa Rosa, CA 95403

The Honorable Birgit Fladager  
Stanislaus County District Attorney  
832 12<sup>th</sup> Street, Suite 300  
Modesto, CA 95354

The Honorable Carl Adams  
Sutter County District Attorney  
446 Second Street  
Yuba City, CA 95991

The Honorable Gregg Cohen  
Tehama County District Attorney  
444 Oak Street, Room L  
Red Bluff, CA 96080

The Honorable Michael B. Harper  
Trinity County District Attorney  
PO Box 310  
Weaverville, CA 96093

The Honorable Phillip Cline  
Tulare County District Attorney  
221 South Mooney Boulevard, Suite 224  
Visalia, CA 93291

The Honorable Donald Segerstrom, Jr  
Tuolumne County District Attorney  
423 North Washington Street  
Sonora, CA 95370

The Honorable Gregory Totten  
Ventura County District Attorney  
800 South Victoria Avenue  
Ventura, CA 93009

The Honorable Jeff Reisig  
Yolo County District Attorney  
301 Second Street  
Woodland, CA 95695

The Honorable Patrick McGrath  
Yuba County District Attorney  
215 Fifth Street  
Marysville, CA 95901

The Honorable Mike Feuer  
Office of the City Attorney, Los Angeles  
800 City Hall East  
200 North Main Street  
Los Angeles, CA 90012

The Honorable Jan Goldsmith  
Office of the City Attorney, San Diego  
1200 Third Avenue, Suite 1620  
San Diego, CA 92101

The Honorable Eileen M. Teichert  
Office of the City Attorney, Sacramento  
915 I Street, 4<sup>th</sup> Floor  
Sacramento, CA 95814

The Honorable Dennis J. Herrera  
Office of the City Attorney, San Francisco  
City Hall, Room 234  
San Francisco, CA 94102

The Honorable Richard Doyle  
Office of the City Attorney, San Jose  
200 East Santa Clara Street  
San Jose, CA 95113

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