



1           2.       Defendants POST FOODS, LLC; GENERAL MILLS, INC.; GENERAL MILLS  
2 SALES, INC.; KELLOGG USA, INC. and DOES 1-100 (hereinafter referred to collectively as  
3 "Defendants") are and at all times mentioned herein have been qualified to do business in the  
4 State of California.

5           3.       Plaintiff is ignorant of the true names and capacities of defendants sued as DOES  
6 1- 500, inclusive, and therefore sue these defendants by such fictitious names. The fictitious  
7 defendants named in this Complaint are sued pursuant to the provisions of C.C.P. § 474.  
8 Plaintiff is informed and believes, and upon that ground, alleges that each fictitious defendant is  
9 in some way responsible for, participated in, or contributed to the matters and things of which  
10 Plaintiff complains herein, and in some fashion, has legal responsibility therefor. When the exact  
11 nature and identity of such fictitious defendants' responsibility for, participation in, and  
12 contribution to the matters and things alleged herein are ascertained by Plaintiff, Plaintiff will  
13 seek to amend this Complaint and all proceedings herein to set forth the same.

14           4.       At all times mentioned herein each of the Defendants was a person within the  
15 meaning of Business & Professions Code § 17201 and a person doing business within the  
16 meaning of Health & Safety Code § 25249.11 (a). Plaintiff is informed and believes and thereon  
17 alleges that at all times mentioned herein, each of the Defendants has had 10 or more employees.

18           5.       The Court has jurisdiction over this action pursuant to California Constitution  
19 Article VI, Section 10, which grants the Superior Court original jurisdiction in all causes except  
20 those given by statute to other trial courts. The statutes under which this action is brought do not  
21 specify any other basis of jurisdiction.

22           6.       Defendants have violated Proposition 65, the Safe Drinking Water and Toxic  
23 Enforcement Act (commencing with Health & Safety Code Section 25249.5) (hereinafter  
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1 "Proposition 65") by preparing and making available for sale the "Products" (Ready to Eat  
2 Breakfast Cereals ) listed on Exhibit A hereto which contain acrylamide formed during the  
3 cooking processes utilized by Defendants.

4 7. Acrylamide is a chemical listed by the State of California as a chemical known to  
5 the State of California to cause cancer and/or reproductive toxicity.

6 8. The route of exposure for the violations addressed by this Complaint is ingestion.

7 9. Proposition 65 provides that when a party, such as each of the Defendants, has  
8 been and is knowingly and intentionally exposing its customers, visitors, employees and the  
9 general public to chemicals designated by the State of California to cause cancer and  
10 reproductive toxicity ("the Designated Chemicals") it has violated the statute unless, prior to  
11 such exposure, it provides clear and reasonable warning of that potential exposure to the  
12 potentially exposed persons (Health & Safety Code Section 24249.6).

13 10. Although Defendants have admitted publicly that the Products contain acrylamide,  
14 caused by the cooking practices of the Defendants, they have failed to provide any warning to the  
15 public.

16 11. Defendants have violated the statute because they refuse to provide a clear and  
17 reasonable warning of that potential exposure to the potentially exposed persons, or in fact any  
18 warning at all.

19 12. Defendants have sold the listed Products on Exhibit A in California for at least the  
20 last four years prior to the filing of this Complaint and this is the relevant time period during  
21 which Plaintiff alleges Defendants have violated Proposition 65.

1 **FIRST CAUSE OF ACTION**

2 **VIOLATION OF PROPOSITION 65 (Health & Safety**

3 **Code, §§ 25249.6, et seq.)**

4 **(AGAINST ALL DEFENDANTS)**

5  
6 13. Plaintiff refers to and incorporates by reference herein, paragraphs 1 through 12,  
7 inclusive as if set forth in full.

8 14. Plaintiff is informed and believe and thereon allege that Defendants and DOES 1-  
9 100 knowingly and intentionally exposed consumers, their customers and/or the general public to  
10 chemicals known to the State of California to cause cancer, birth defects and reproductive  
11 toxicity, as set forth in Health & Safety Code §§ 25249.5, et seq. and 22 California Code of  
12 Regulations §§ 12000 through 14000 ("Proposition 65") without giving clear and reasonable  
13 warnings of that fact to the exposed persons prior to exposure.  
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15 15. Proposition 65 states that when parties, such as Defendants, entities with more  
16 than ten employees, have been or are knowingly and intentionally exposing their customers and  
17 users of the Products they sell to a detectable level of any chemical designated by the State of  
18 California to cause cancer or reproductive toxicity (the "Designated Chemical"), each has  
19 violated the statute unless, prior to such exposure, it provides clear and reasonable warning of the  
20 exposure to the Designated Chemical to the potentially exposed persons prior to such exposure.  
21 Health & Safety Code § 25249.6.  
22

23 16. Defendants knowingly and intentionally exposed consumers, customers and/or the  
24 general public to acrylamide, a chemical known to the State of California to cause cancer, birth  
25 defects and reproductive toxicity, as set forth in Health & Safety Code § 25249.5, et seq. and 22  
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1 California Code of Regulations §§ 12000 through 14000 through the sale and distribution of the  
2 cereal products listed on Exhibit A hereto in California.

3 17. In the ordinary course of business, Defendants, for at least four years prior to the  
4 filing of this complaint, have violated Proposition 65, the Safe Drinking Water and Toxic  
5 Enforcement Act (commencing with Health & Safety Code Section 25249.5) (hereinafter  
6 "Proposition 65") by preparing and making available for sale the "Products" (Ready to Eat  
7 Breakfast Cereals) listed on Exhibit A hereto which contain acrylamide.  
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9 18. Acrylamide is a chemical listed by the State of California as a chemical known to  
10 the State of California to cause cancer and/or reproductive toxicity.

11 19. The primary route of exposure for the violations addressed by this Notice is via  
12 ingestion.  
13

14 20. The current OEHHA "no significant risk level" ("NSRL") or "safe harbor" level  
15 of acrylamide intake is .2 ug/day. The current NSRL is the daily intake level calculated to result  
16 in one excess case of cancer in an exposed population of 100,000, assuming lifetime (70-year)  
17 exposure at the level in question.  
18

19 21. Defendants' Products contain levels of acrylamide that exceed the NSRL for  
20 acrylamide which therefore require warnings under Proposition 65.

21 22. Defendants have not given any clear and reasonable warning in any manner or in  
22 any medium to persons in California who consume their Products that the Products contain  
23 acrylamide and/or that the acrylamide contained in their Products causes cancer before  
24 Defendants knowingly and intentionally exposed such individuals to the acrylamide contained in  
25 their Products sold for consumption in California.  
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1           23.     Although Defendants have admitted publicly that the Products contain acrylamide,  
2 caused by the cooking practices of the Defendants, they have failed and refused to provide any  
3 warning to the public. Proposition 65 provides that when a party, such as each of the  
4 Defendants, has been and is knowingly and intentionally exposing its customers, visitors,  
5 employees and the general public to chemicals designated by the State of California to cause  
6 cancer and reproductive toxicity ("the Designated Chemicals") it has violated the statute unless,  
7 prior to such exposure, it provides clear and reasonable warning of that potential exposure to the  
8 Designated Chemical to those potentially exposed persons prior to exposure. Health & Safety  
9 Code Section 24249.6.  
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11           24.     Defendants have violated the statute because they refuse to provide a clear and  
12 reasonable warning of that potential exposure to the potentially exposed persons, or in fact any  
13 warning at all.  
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15           25.     Defendants have sold the listed Products on Exhibit A in California for at least the  
16 last four years and this is the relevant time period during which the Noticing Party alleges the  
17 Defendants have violated Proposition 65.  
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19           26.     At all times relevant to this action Defendants knew that their customers,  
20 consumers, and/or the general public could be and/or were being exposed, through ingestion, to  
21 acrylamide, a chemical known to the State of California to cause cancer, birth defects and  
22 reproductive toxicity, as set forth in Health & Safety Code § 25249.5, et seq. and 22 California  
23 Code of Regulations §§ 12000 through 14000.  
24

25           27.     Each of the Defendants knew these facts because they are in the business of  
26 distributing and selling cereals which (i) they have publicly acknowledged contain acrylamide  
27 resulting from Defendants cooking processes; (ii) the EPA has publicly stated, after testing the  
28

1 Products, contain high levels of acrylamide; and, (iii) because they have previously been sued on  
2 this very matter and have acknowledged during that litigation that the listed Products do in fact  
3 contain acrylamide created during the cooking processes used by Defendants.  
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5 28. More than sixty (60) days prior to filing this action Plaintiff mailed to each of the  
6 Defendants a Sixty (60) Day Notice of Intent to Sue ("the Notice") for violations of Proposition  
7 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with Health & Safety  
8 Code § 25249.5) by knowingly and intentionally exposing consumers, their customers and/or the  
9 general public to acrylamide, a chemical designated by the State of California to cause cancer,  
10 birth defects and reproductive toxicity without first giving clear and reasonable warning of that  
11 fact to the exposed persons as required by Health & Safety Code § 24249.6. The Notice  
12 specifically identified that the Defendants offered for sale and distributed throughout California  
13 the Products, and that thereby Defendants had exposed consumers, their customers and/or the  
14 general public to acrylamide without providing a warning. The Notice identified the time period  
15 wherein such exposures had occurred, and also identified the route of exposure for the chemicals  
16 as inhalation. Included with the Notice was a copy of "The Safe Drinking Water and Toxic  
17 Enforcement Act of 1986 (Proposition 65): A Summary. A true and correct copy of the Notice is  
18 attached hereto as Exhibit B.  
19  
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21 29. Copies of the Notice referred to in paragraph 28 were mailed to the California  
22 Attorney General, the relevant County District Attorneys and City Attorneys for each city  
23 containing a population of at least 750,000 people (hereinafter referred to collectively as the  
24 "Prosecutors") where the Defendants had violated Health & Safety Code §§ 25249.5, et seq. and  
25 22 California Code of regulations §§ 12000 through 14000.  
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30. No response was ever received from any of the Prosecutors. None of the Prosecutors is prosecuting an action against any Defendant herein for the violations set forth above.

31. Individuals exposed to the listed chemicals suffered and continue to suffer harm due to their exposure to said chemicals without prior clear and reasonable warning.

32. This action for injunctive relief and penalties for violation of Health & Safety Code §§ 25249.5, et seq. is specifically authorized by Health & Safety Code § 25249.7.

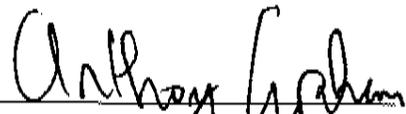
**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests against Defendants POST FOODS, LLC; GENERAL MILLS, INC.; GENERAL MILLS SALES, INC.; KELLOGG USA, INC. and DOES 1 - 100:

- 1. A permanent injunction pursuant to California Health & Safety Code § 25249.7(a), and the equitable powers of the court;
- 2. Penalties pursuant to California Health & Safety Code § 25249.7(b) in the amount of \$2,500.00 per day per violation for the statutory period;
- 3. Costs of suit;
- 4. Reasonable attorneys' fees and costs to the extent permitted by statute; and,
- 5. Any further relief that the court may deem just and equitable.

DATED: May 9, 2013

GRAHAM & MARTIN, LLP

By:   
 Anthony G. Graham  
 Attorneys for Plaintiff  
 DR. RICHARD F. SOWINSKI

# EXHIBIT A

## EXHIBIT A

- a. General Mills Products:
- Apple Cinnamon Cheerios
  - Berry Burst Cheerios
  - Cheerios (original, aka "Yellow Box")
  - Cinnamon Toast Crunch
  - Cocoa Puffs
  - Cookie Crisp
  - Corn Chex
  - Fiber One (original)
  - Fiber One Caramel Delight
  - French Toast Crunch
  - Frosted Cheerios
  - Golden Grahams
  - Honey Nut Cheerios
  - Honey Nut Clusters
  - Kix (original)
  - Lucky Charms
  - Multi-Grain Cheerios
  - Oatmeal Crisp (Crunchy Almond)
  - Oatmeal Crisp (Hearty Raisin)
  - Raisin Nut Bran
  - Reese's Puffs
  - Rice Chex
  - Total Brown Sugar & Oats
  - Total Corn Flakes
  - Total Raisin Bran
  - Total Whole Grain
  - Wheat Chex
  - Wheaties (original)
- b. Kellogg Products
- All-Bran (original)
  - All-Bran Bran Buds
  - All-Bran Complete Wheat Flakes
  - Corn Pops
  - Cracklin' Oat Bran
  - Crispix
  - Frosted Flakes (original)
  - Frosted Mini-Wheats (Big Bite)
  - Frosted Mini-Wheats (Bite Size)
  - Kellogg's Corn Flakes (original)

- Kellogg's Raisin Bran
  - Kellogg's Raisin Bran Crunch
  - Mueslix
  - Rice Krispies (original)
  - Smart Start Antioxidant
  - Smart Start Healthy Heart
  - Special K (original)
- c. Post Foods Products:
- Cocoa Pebbles
  - Fruity Pebbles
  - Grape-Nuts
  - Great Grains Banana Nut Crunch
  - Great Grains Cranberry Almond Crunch
  - Honey Bunches of Oats (Honey Roasted)
  - Honey Bunches of Oats (with Almonds)
  - Honeycomb
  - Post Bran Flakes
  - Post Raisin Bran
  - Selects Blueberry Morning
  - Selects Maple Pecan Crunch
  - Shredded Wheat (original, aka "Big Biscuit")
  - Shredded Wheat Spoon Size

# EXHIBIT B

**GRAHAM & MARTIN, LLP**

ATTORNEYS AT LAW

3130 S. HARBOR BOULEVARD, SUITE 250  
SANTA ANA, CALIFORNIA 92704TELEPHONE (714) 850-9390  
FACSIMILE (714) 850-9392**Sixty Day Notice of Intent to Sue Post Foods, LLC, General Mills, Inc.,  
General Mills Sales, Inc., and Kellogg USA, Inc. Under California  
Health & Safety Code Section 25249.6**

Dr. Richard Sowinski (hereinafter "the Noticing Party") hereby gives Notice of Intent to Sue Under Health & Safety Code Section 25249.5 ("the Notice") to Mr. Ronald D. Wilkinson, President, Post Foods, LLC ("Post"), Mr. Kendall J. Powell, President, General Mills, Inc. ("General Mills") and Mr. John A. Bryant, President, Kellogg USA, Inc. ("Kellogg") (hereinafter Post, General Mills and Kellogg are referred to collectively as "the Violator"), as well as the governmental entities on the attached proof of service. The Noticing Party must be contacted through his attorney, Anthony G. Graham whose address, telephone and facsimile numbers are set forth above.

This Notice is intended to inform the Violator that it has violated Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with Health & Safety Code Section 25249.5) (hereinafter "Proposition 65") by preparing and making available for sale the Products (Ready to Eat Breakfast Cereals) listed on Exhibit A hereto which contain acrylamide. Acrylamide is a chemical listed by the State of California for more than twelve months as being a chemical known to the State of California to cause cancer and/or reproductive toxicity. The route of exposure for the violations addressed by this Notice is ingestion. There is also a danger of a dermal exposure while preparing the product for consumption.

Although the Violator has admitted publicly that the Products contain acrylamide, caused by the cooking practices of the Violators, they have failed to provide any warning to the public. Proposition 65 provides that when a party, such as the Violator, has been and is knowingly and intentionally exposing its customers, visitors, employees and the general public to chemicals designated by the State of California to cause cancer and reproductive toxicity ("the Designated Chemicals") it has violated the statute unless, prior to such exposure, it provides clear and reasonable warning of that potential exposure to the potentially exposed persons (Health & Safety Code Section 24249.6). The Violator has violated the statute because they refuse to provide a clear and reasonable warning of that potential exposure to the potentially exposed persons, or in fact any warning at all.

The Violators have sold the listed Products on Exhibit A in California for at least the last four years and this is the relevant time period during which the Noticing Party alleges the

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PAGE 02/13

Violator has violated Proposition 65. The principal route of exposure is through a "consumer products exposure" via ingestion and inhalation. There is a further danger of contacting these carcinogens via a dermal exposure while using the food products as intended by the Violator.

Proposition 65 requires that notice and intent to sue be given to the Violator sixty days before a suit is filed. With this letter, Dr. Sowinski gives notice of the alleged violations to the Violator and the appropriate governmental authorities. This notice covers all violations of Proposition 65 that are currently known to Dr. Sowinski from information now available to him. Dr. Sowinski reserves the right to amend this Notice to inform the Violator of other violations and/or exposures as he gathers further information. With the copy of this notice submitted to the Violator, a copy is provided of The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary".

Dated: February 27, 2013

By:

  
Anthony G. Graham, Esq.

## EXHIBIT A

- a. General Mills Products:
- Apple Cinnamon Cheerios
  - Berry Burst Cheerios
  - Cheerios (original, aka "Yellow Box")
  - Cinnamon Toast Crunch
  - Cocoa Puffs
  - Cookie Crisp
  - Corn Chex
  - Fiber One (original)
  - Fiber One Caramel Delight
  - French Toast Crunch
  - Frosted Cheerios
  - Golden Grahams
  - Honey Nut Cheerios
  - Honey Nut Clusters
  - Kix (original)
  - Lucky Charms
  - Multi-Grain Cheerios
  - Oatmeal Crisp (Crunchy Almond)
  - Oatmeal Crisp (Hearty Raisin)
  - Raisin Nut Bran
  - Reese's Puffs
  - Rice Chex
  - Total Brown Sugar & Oats
  - Total Corn Flakes
  - Total Raisin Bran
  - Total Whole Grain
  - Wheat Chex
  - Wheaties (original)
- b. Kellogg Products
- All-Bran (original)
  - All-Bran Bran Buds
  - All-Bran Complete Wheat Flakes
  - Corn Pops
  - Cracklin' Oat Bran
  - Crispix
  - Frosted Flakes (original)
  - Frosted Mini-Wheats (Big Bite)
  - Frosted Mini-Wheats (Bite Size)
  - Kellogg's Corn Flakes (original)

- Kellogg's Raisin Bran
  - Kellogg's Raisin Bran Crunch
  - Mueslix
  - Rice Krispies (original)
  - Smart Start Antioxidant
  - Smart Start Healthy Heart
  - Special K (original)
- c. Post Foods Products:
- Cocoa Pebbles
  - Fruity Pebbles
  - Grape-Nuts
  - Great Grains Banana Nut Crunch
  - Great Grains Cranberry Almond Crunch
  - Honey Bunches of Oats (Honey Roasted)
  - Honey Bunches of Oats (with Almonds)
  - Honeycomb
  - Post Bran Flakes
  - Post Raisin Bran
  - Selects Blueberry Morning
  - Selects Maple Pecan Crunch
  - Shredded Wheat (original, aka "Big Biscuit")
  - Shredded Wheat Spoon Size

## Appendix A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

#### THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACTION 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the Office of Environmental Health Hazard Assessment, 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 its implementing regulations (see citations below) for further information.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. 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 25000 through 27000.

#### 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, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 735 chemicals have been listed as of November 16, 2001. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release, or otherwise engage in activities involving those 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. 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. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the chemical.

**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. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the chemical.

#### DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. The law exempts:

**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.

**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 for more than 250 listed carcinogens.

**Exposures that will produce no observable reproductive effect at 1,000 times the level in question.** For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), 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 (NOEL)," divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect.

*Discharge 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 list chemical has not, does not, or will not enter any drinking water source, 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" or "no observable effect" test if an individual were exposed to such an 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 (those in cities with a population exceeding 750,000). 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. A notice must comply with the information and procedural requirements specified in regulations (Title 27, California Code of Regulations, Section 25903). A private party may not pursue an enforcement action directly 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 of law to stop committing the violation.

#### FOR FURTHER INFORMATION...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900.

#### § 27000.

#### **Chemicals Required by State or Federal Law to Have been Tested for Potential to Cause Cancer or Reproductive Toxicity, but Which Have Not Been Adequately Tested As Required.**

(a) The Safe Drinking Water and Toxic Enforcement Act of 1986 requires the Governor to publish a list of chemicals formally required by state or federal agencies to have testing for carcinogenicity or reproductive toxicity, but that the state's qualified experts have not found to have been adequately tested as required [Health and Safety Code 25249.8(c)].

Readers should note a chemical that already has been designated as known to the state to cause cancer or reproductive toxicity is not included in the following listing as requiring additional testing for that particular toxicological endpoint. However, the "data gap" may continue to exist, for purposes of the state or federal agency's requirements. Additional information on the requirements for testing may be obtained from the specific agency identified below.

(b) Chemicals required to be tested by the California Department of Pesticide Regulation. The Birth Defect Prevention Act of 1984 (SB 950) mandates that the California Department of Pesticide Regulation (CDPR) review chronic toxicology studies supporting the registration of pesticidal active ingredients. Missing or unacceptable studies are identified as data gaps. The studies are conducted to fulfill generic data requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which is administered by the United States Environmental Protection Agency (U.S. EPA). The studies are reviewed by CDPR according to guidelines and standards promulgated under FIFRA. Thus, older studies may not meet current guidelines.

The existence of a data gap for a compound does not indicate a total lack of information on the carcinogenicity or reproductive toxicity of the compound. In some cases, information exists in the open scientific literature, but SB 950 requires specific, additional information. A data gap does not necessarily indicate that an oncogenic or reproductive hazard exists. For the purposes of this list, a data gap is still considered to be present until the study is reviewed and found to be acceptable.

Following is a listing of SB 950 data gaps for oncogenicity, reproduction, and teratology studies for the non-200 pesticidal active ingredients. This list will change as data gaps are filled by additional data or replacement studies.

[Final Paragraph and List Omitted].

**CERTIFICATE OF MERIT**  
**Health and Safety Code Section 25249.7(d)**

I, Anthony G. Graham, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the parties identified in the notices have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.

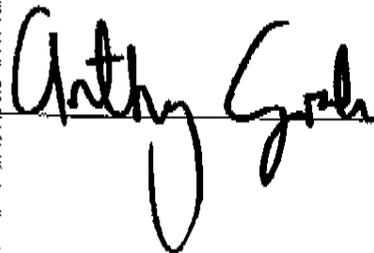
2. I am member of the State Bar of California, a partner of the law firm of Graham & Martin, LLP, and attorney for noticing party Dr. Richard Sowinski.

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 exposures to the listed chemicals that are 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.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Santa Ana, California on February 28, 2013.

  
 \_\_\_\_\_

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 3130 South Harbor Blvd., Suite 250, Santa Ana, California 92704.

I SERVED THE FOLLOWING:

- 1.) 60-Day Notice of Intent to Sue under Health & Safety Code Section 24249.6;
- 2.) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary (*only sent to violators*); and
- 3.) Certificate of Merit and supporting documents (*only sent to Office of Attorney General*)

by enclosing a true copy of the same in a sealed envelope addressed to each person whose name and address is shown below and depositing the envelope in the United States mail with the postage fully prepaid:

Date of Mailing: February 28, 2013.  
Place of Mailing: Santa Ana, California

NAME AND ADDRESS OF EACH PERSON TO WHOM DOCUMENTS WERE MAILED:

California Attorney General  
(Proposition 65 Enforcement Division)  
P.O. Box 944255  
Sacramento, CA 94244-2550

Mr. Ronald Wilkinson, CEO  
Post Foods LLC  
275 Cliff Street  
Battle Creek, MI 49014

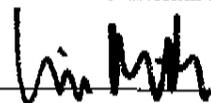
Mr. Kendall J. Powell, CEO  
General Mills, Inc.  
General Mills Sales, Inc.  
No. One General Mills Blvd.,  
Minneapolis, MN 55426

Mr. John Bryant, CEO  
Kellogg USA, Inc.  
275 Cliff Street  
Battle Creek, MI 49016

SEE ATTACHED LIST OF SERVED PARTIES.

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

Dated: February 28, 2013

  
\_\_\_\_\_

**ATTACHMENT TO PROOF OF SERVICE**

San Diego City Attorney  
1200 3rd Ave. Ste. 1620  
San Diego, CA 92101

San Diego County District Attorney  
330 Broadway  
San Diego, CA 92101

Los Angeles City Attorney  
200 N. Main St. N.E.  
Los Angeles, CA 90012

Los Angeles County DA  
210 W. Temple Street, 18th Floor  
Los Angeles, CA 90012

San Francisco City Attorney  
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San Francisco, CA 94102

San Francisco County DA  
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San Francisco, CA 94103

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P.O. Box 749  
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Orange County District Attorney  
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San Jose, CA 95110

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San Jose, CA 95134

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Ventura County DA  
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Ventura, CA 95695

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Napa, CA 94559

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Bakersfield, CA 93305

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Bishop, CA 93514

San Joaquin DA  
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Lodi, CA 95240

Lake County DA  
255 N. Forbes St.  
Lakeport, CA 95453

Mendocino County DA  
700 S. Franklin St.  
Fort Bragg, CA 94537

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Tulare, CA 93274

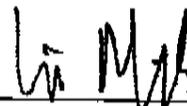
Inyo County DA  
PO Drawer D  
Independence, CA 93526

Mono County DA  
P.O. Box 617  
Bridgeport, CA 93517

Santa Barbara County DA  
1105 Santa Barbara St.  
Santa Barbara, CA 93101

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

Dated: February 28, 2013

A handwritten signature in black ink, appearing to read 'Lia M...', is written above a horizontal line.