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11 Attorneys for Plaintiff Center for Food Safety

ENDORSED  
FILED  
ALAMEDA COUNTY

AUG 28 2018

CLERK OF THE SUPERIOR COURT

By CURTIYAH GANTER  
Deputy

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF ALAMEDA

15 CENTER FOR FOOD SAFETY, a non-  
16 profit corporation,

17 Plaintiff,

18 vs.

19 WHOLE FOODS MARKET, INC., a Texas  
20 corporation; and WHOLE FOODS  
21 MARKET CALIFORNIA, INC., a  
22 California corporation,

Defendants.

Case No.:

RG18918563

COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES

23 Plaintiff Center for Food Safety ("Plaintiff") brings this action in the interests of the  
24 general public and, on information and belief, hereby alleges:

25 INTRODUCTION

26 1. This action seeks to remedy the continuing failure of Defendants Whole Foods  
27 Market, Inc. and Whole Foods Market California, Inc. (collectively, "Defendants") to warn  
28

COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

1 individuals in California that they are being exposed to the chemical acrylamide, a substance  
2 known to the State of California to cause cancer. These exposures have occurred, and continue  
3 to occur through the manufacture, distribution, sale, and consumption of the following peanut  
4 butter and almond butter products, which contain the chemical acrylamide (the “Nut Butter  
5 Products”):

- 6 1. 365 Peanut Butter Crunchy
- 7 2. 365 Peanut Butter Creamy
- 8 3. 365 Organic Creamy Peanut Butter Spread
- 9 4. 365 Organic Crunchy Peanut Butter Spread
- 10 5. 365 Organic Creamy Peanut Butter Spread Unsweetened
- 11 6. 365 Organic Creamy Peanut Butter Unsweetened & No Salt
- 12 7. 365 Almond Butter Crunchy
- 13 8. 365 Almond Butter Creamy
- 14 9. 365 Organic Almond Butter Unsweetened & No Salt

15 2. California’s Proposition 65 (Health & Safety Code § 25249.5, *et seq.*), is a right  
16 to know statute. Under Proposition 65, it is unlawful for businesses to knowingly and  
17 intentionally expose individuals in California to chemicals known to the State to cause cancer,  
18 birth defects, or other reproductive harm without providing clear and reasonable warnings to  
19 individuals prior to exposure.

20 3. When consumers eat the Nut Butter Products, they are exposed to acrylamide at  
21 levels requiring a “clear and reasonable warning” under Proposition 65. Yet Defendants have  
22 failed to provide any warning to consumers that they are being exposed to the carcinogenic  
23 chemical acrylamide.

24 4. Defendants’ past and continued manufacturing, distribution, and sale of the Nut  
25 Butter Products in California without a clear and reasonable warning causes individuals to be  
26 involuntarily and unwittingly exposed to acrylamide at levels that violate Proposition 65.

27 5. Plaintiff seeks injunctive relief enjoining Defendants from the continued  
28

1 manufacturing, distribution, and/or sales of the Nut Butter Products in California without  
2 provision of clear and reasonable warnings regarding the risks of cancer posed by exposure to  
3 acrylamide through consumption of the Nut Butter Products. Plaintiff seeks an injunctive order  
4 compelling Defendants to bring their business practices into compliance with Proposition 65 by  
5 providing a clear and reasonable warning to each individual who has been and who in the  
6 future may be exposed to acrylamide from consumption of the Nut Butter Products. Plaintiff  
7 also seeks an order compelling Defendants to identify and locate each individual person who in  
8 the past has purchased the Nut Butter Products, and to provide to each such purchaser a clear  
9 and reasonable warning that use of the Nut Butter Products will cause exposures to acrylamide.  
10

### 11 **JURISDICTION AND VENUE**

12 6. This Court has jurisdiction over this action pursuant to Health and Safety Code  
13 § 25249.8, allowing enforcement of Proposition 65 in any court of competent jurisdiction, and  
14 pursuant to California Constitution Article VI, Section 10, which grants the Superior Court  
15 “original jurisdiction in all causes except those given by statute to other trial courts.” The  
16 causes of actions alleged herein are not given by statute to other trial courts.

17 8. This Court has jurisdiction over Defendants because Defendants are businesses  
18 having sufficient minimum contacts with California, or otherwise intentionally availing  
19 themselves of the California market through the distribution and sale of the Nut Butter  
20 Products in the State of California to render the exercise of jurisdiction over Defendants by the  
21 California courts consistent with traditional notions of fair play and substantial justice.

22 9. Venue in this action is proper in the Alameda Superior Court because  
23 Defendants have violated or threaten to violate California law in the County of Alameda.  
24

### 25 **PARTIES**

26 10. Plaintiff Center for Food Safety is a non-profit corporation working to protect  
27 human health and the environment by curbing the use of harmful food production technologies  
28 and by promoting organic and other forms of sustainable agriculture. Plaintiff is Center for

Food Safety is a person within the meaning of Health & Safety Code §25118 and brings this enforcement action in the public interest pursuant to Health & Safety Code §25249.7(d).

11. Defendant Whole Foods Market, Inc. is a corporation organized under the State of Texas' corporation law and is a person doing business within the meaning of Health & Safety Code § 25249.11.

12. Defendant Whole Foods Market California, Inc. is a corporation organized under the State of California's corporation law and is a person doing business within the meaning of Health & Safety Code § 25249.11.

13. Defendants have manufactured, packaged, distributed, marketed and/or offered the Nut Butter Products for sale or use in California and the County of Alameda. Plaintiff is informed and believes, and thereupon alleges, that Defendants continue to manufacture, package, distribute, market and/or sell the Nut Butter Products in California and in Alameda County.

### **STATUTORY BACKGROUND**

14. The People of the State of California have declared in Proposition 65 their right "[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other reproductive harm." Section 1(b) of Initiative Measure, Proposition 65.

15. To effect this goal, Proposition 65 requires that individuals be provided with a "clear and reasonable warning" before being exposed to substances listed by the State of California as causing cancer or reproductive toxicity. Health & Safety Code § 25249.6 states, in pertinent part:

No 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....

16. "'Knowingly' refers only to knowledge of the fact that a discharge of, release of, or exposure to a chemical listed pursuant to Section 25249.8(a) of the Act is occurring. No knowledge that the discharge, release or exposure is unlawful is required." 27 Cal. Code of

1 Regs. (“CCR”) § 25102(n).

2 17. Proposition 65 provides that any “person who violates or threatens to violate” the  
3 statute may be enjoined in a court of competent jurisdiction. Health & Safety Code § 25249.7.

4 The phrase “threaten to violate” is defined to mean creating “a condition in which there is a  
5 substantial probability that a violation will occur.” Health & Safety Code § 25249.11(e).

6 Violators are liable for civil penalties of up to \$2,500 per day for each violation of the Act.

7 Health & Safety Code § 25249.7.

8 18. On January 1, 1990, the State of California officially listed the chemical  
9 acrylamide as a chemical known to cause cancer. Acrylamide became subject to the warning  
10 requirement one year later and was therefore subject to the “clear and reasonable” warning  
11 requirements of Proposition 65 beginning on January 1, 1991. Health & Safety Code §  
12 25249.6 *et seq.*; 27 Cal. Code Regs. §§ 25000, *et seq.* Due to the carcinogenicity of  
13 acrylamide, the no significant risk level for acrylamide is 0.2 µg/day (micrograms per day). 27  
14 Cal. Code Regs. § 25705(b)(1).

15  
16 **FACTUAL BACKGROUND**

17 19. To test Defendants’ Nut Butter Products for acrylamide, Plaintiff hired a well-  
18 respected and accredited testing laboratory. The results of testing undertaken by Plaintiff of  
19 the Nut Butter Products show that they were in violation of the 0.2 microgram per day  
20 (“µg/day”) for acrylamide “safe harbor” daily dose limits set forth in Proposition 65’s  
21 regulations.

22 20. Based on the testing results, on June 18, 2018, Plaintiff sent a 60-Day Notice of  
23 Proposition 65 Violations (“Notice”) to the requisite public enforcement agencies, and to  
24 Defendants (a true and correct copy of the 60-Day Notice letter is attached hereto as **Exhibit A**  
25 and is incorporated by reference). The Notice was issued pursuant to, and in compliance with,  
26 the requirements of Health & Safety Code §25249.7(d) and the statute’s implementing  
27 regulations regarding the notice of the violations to be given to certain public enforcement  
28

1 agencies and to the violators. The Notice included, *inter alia*, the following information: the  
2 name, address, and telephone number of the noticing individuals; the name of the alleged  
3 violator; the statute violated; the approximate time period during which violations occurred;  
4 and descriptions of the violations, including the chemical involved, the routes of toxic  
5 exposure, and the specific product or type of product causing the violations, and was issued as  
6 follows:

- 7 a. Defendants were provided a copy of the Notice by Certified Mail.
- 8 b. Defendants were provided a copy of a document entitled “The Safe Drinking  
9 Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary,”  
10 which is also known as Appendix A to Title 27 of Cal. Code Regs. § 25903.
- 11 c. The California Attorney General was provided a copy of the Notice via online  
12 submission.
- 13 d. The California Attorney General was provided with a Certificate of Merit by the  
14 attorney for the noticing party, stating that there is a reasonable and meritorious  
15 case for this action, and attaching factual information sufficient to establish a  
16 basis for the certificate, including the identity of the persons consulted with and  
17 relied on by the certifier, and the facts, studies, or other data reviewed by those  
18 persons, pursuant to Health & Safety Code § 25249.7(h)(2).
- 19 e. The district attorneys, city attorneys or prosecutors of each jurisdiction within  
20 which the Nut Butter Products are offered for sale within California were  
21 provided with a copy of the Notice pursuant to Health & Safety Code §  
22 25249.7(d)(1).

23  
24  
25 21. At least 60-days have elapsed since Plaintiff sent the Notice to Defendants. The  
26 appropriate public enforcement agencies have failed to commence and diligently prosecute a  
27 cause of action under Health & Safety Code § 25249.5, *et seq.* against Defendants based on the  
28 allegations herein.

1           22.     On information and belief, the Nut Butter Products have been manufactured,  
2 distributed, and/or sold by Defendants for consumption in California since at least August 28,  
3 2015. On information and belief, the Nut Butter Products continue to be distributed and sold in  
4 California without the requisite warning information.

5           23.     At all times relevant to this action, Defendants have knowingly and  
6 intentionally exposed the users of the Nut Butter Products to acrylamide without first giving a  
7 clear and reasonable warning to such individuals.

8           24.     As a proximate result of acts of Defendants, as persons in the course of doing  
9 business within the meaning of Health & Safety Code § 25249.11, individuals throughout the  
10 State of California, including in the County of Alameda, have been exposed to acrylamide  
11 without a clear and reasonable warning. The individuals subject to the illegal exposures  
12 include normal and foreseeable users of the Nut Butter Products, as well as all other persons  
13 exposed to the Nut Butter Products.  
14

15                               **FIRST CAUSE OF ACTION**  
16           **(Violations of Health and Safety Code § 25249.5, *et seq.* concerning the Nut Butter**  
17           **Products described in the June 18, 2018 Prop. 65 Notice)**

18           25.     Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 24,  
19 inclusive, as if specifically set forth herein.

20           26.     Defendants are persons doing business within the meaning of Health & Safety  
21 Code § 25249.11.

22           27.     Acrylamide is listed by the State of California as a chemical known to cause  
23 cancer.

24           28.     Defendants have and continue to knowingly and intentionally expose  
25 individuals who ingest the Nut Butter Products to the chemical acrylamide without first  
26 providing a clear and reasonable warning to such individuals pursuant to Health & Safety Code  
27 §§ 25249.6 and 25249.11(f).

28           29.     Continuing commission by Defendants of the acts alleged above will irreparably

1 harm the citizens of the State of California, for which harm they have no plain, speedy, or  
2 adequate remedy at law.

3  
4 Wherefore, Plaintiff prays for judgment against Defendants, as set forth hereafter.

5 **PRAYER FOR RELIEF**

6 Wherefore, Plaintiff prays for the following relief:

7 1. A preliminary and permanent injunction, pursuant to Health & Safety Code §  
8 25249.7(b), enjoining Defendants, their agents, employees, assigns and all persons acting in  
9 concert or participating with Defendants, from distributing or selling the Nut Butter Products in  
10 California without first providing a clear and reasonable warning that consumers of the Nut  
11 Butter Products are exposed to acrylamide;

12 2. An injunctive order, pursuant to Health & Safety Code § 25249.7(b),  
13 compelling Defendants to identify and locate each individual who has purchased the Nut Butter  
14 Products since August 28, 2015, and to provide a warning to such persons that consumption of  
15 the Nut Butter Products will expose the consumers to a chemical known to cause cancer;


16 3. An assessment of civil penalties pursuant to Health & Safety Code § 25249.7(b)  
17 against Defendants in the amount of \$2,500 per day for each violation of Proposition 65;

18 4. An award to Plaintiff of its reasonable attorney's fees and costs of suit pursuant  
19 to California Code of Civil Procedure § 1021.5, as Plaintiff shall specify in further application  
20 to the Court; and,

21 5. Such other and further relief as may be just and proper.

22  
23 DATED: August 28, 2018

LOZEAU | DRURY LLP

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26 Rebecca L. Davis  
27 Attorneys for Plaintiff  
28 Center for Food Safety

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EXHIBIT A



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June 18, 2018

To: President or CEO – Whole Foods Market, Inc.  
President or CEO – Whole Foods Market California, Inc.  
California Attorney's Office  
District Attorney's Office for 58 counties  
City Attorney's for San Francisco, San Diego, San Jose, and Los Angeles  
(See attached Certificate of Service)

From: Center for Food Safety

**Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.***

Dear Addressees:

This firm represents Center for Food Safety in connection with this Notice of Violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* ("Proposition 65"). Center for Food Safety is a national non-profit public interest and environmental advocacy organization working to protect human health and the environment by curbing the use of harmful food production technologies and by promoting organic and other forms of sustainable agriculture. This letter serves to provide notification of these violations to you and to the public enforcement agencies of Proposition 65.

This letter constitutes notice that the entities listed below have violated and continue to violate provisions of Proposition 65. Specifically, the entities listed below have violated and continue to violate the warning requirement at § 25249.6 of the California Health & Safety Code, which provides 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..."

**Violators:** The name of the violators covered by this notice that violated Proposition 65 (hereinafter referred to as the "Violators") are: 1) Whole Foods Market, Inc., and 2) Whole Foods Market California, Inc.

**Listed Chemical:** These violations involve exposure to the listed chemical acrylamide. On January 1, 1990, California officially listed acrylamide as a chemical known to the State of California to cause cancer. On February 25, 2011, California officially listed acrylamide as a chemical known to cause reproductive and developmental toxicity.

Consumer Products: The following specific products that are the subject of this notice because are causing exposures in violation of Proposition 65 are:

1. 365 Peanut Butter Crunchy
2. 365 Peanut Butter Creamy
3. 365 Organic Creamy Peanut Butter Spread
4. 365 Organic Crunchy Peanut Butter Spread
5. 365 Organic Creamy Peanut Butter Spread Unsweetened
6. 365 Organic Creamy Peanut Butter Unsweetened & No Salt
7. 365 Almond Butter Crunchy
8. 365 Almond Butter Creamy
9. 365 Organic Almond Butter Unsweetened & No Salt

Violation: The alleged Violators knowingly and intentionally exposed and continue to expose consumers within the State of California to acrylamide without providing a Proposition 65 warning. The Violators have manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemical, acrylamide.

Route of Exposure: Use of the products identified in this notice results in human exposures to acrylamide. The primary route of exposure is ingestion.

Duration of Violation: The violations have been occurring since at least June 18, 2017, and are ongoing.

A summary of Proposition 65, prepared by the California Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter sent to the Violators.

Pursuant to California Health & Safety Code § 25249.7(d), Center for Food Safety intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violators agree in an enforceable written agreement to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, Center for Food Safety is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemical and expensive and time

Notice of Violation of Cal. Health & Safety Code §§ 25249.5 *et seq.*


June 18, 2018

Page 3

consuming litigation.

Adam Keats is a Senior Attorney with Center for Food Safety. Mr. Keats is located at 303 Sacramento St., 2nd Floor, San Francisco, CA 94111, Tel. 415-826-0507. Center for Food Safety has retained my firm in connection with this matter. Please direct all questions concerning this notice to me, Rebecca Davis ([rebecca@lozeaudrury.com](mailto:rebecca@lozeaudrury.com)), Lozeau Drury LLP, 410 12th Street, Suite 250, Oakland, California 94607, (510) 836-4200.

Sincerely,



---

Rebecca L. Davis

**Attachments:**

Certificate of Merit

Certificate of Service

OEHHA Summary (to Violators and their Registered Agents for Service of Process only)

Additional Supporting Information for Certificate of Merit (to AG only)

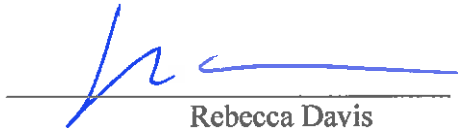
**CERTIFICATE OF MERIT**

**Re: Center for Food Safety's Notice of Proposition 65 Violations by  
Whole Foods Market, Inc. and Whole Foods Market California, Inc.**

I, Rebecca Davis, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party, Center for Food Safety.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.
4. Based on the information obtained through those consultants and 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 that the information did not prove that the alleged violator(s) will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit, additional factual information sufficient to establish the basis for this certificate has been served on the Attorney General, including the information identified in California Health & 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: June 18, 2018

  
\_\_\_\_\_  
Rebecca Davis

## 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 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.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) 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>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

***The “Proposition 65 List.”*** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. 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

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<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>.

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 Proposition 65. 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. 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 to that chemical. 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 under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure 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 causing the exposure 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 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 Food.*** Certain exposures to chemicals that naturally occur in foods (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 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 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.

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

## *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 Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement 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.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at:  
<http://oehha.ca.gov/prop65/law/p65law72003.html>.

*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: May 2017

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

### **CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years old, and am not a party to the within action. My business address is 410 12th Street, Suite 250, Oakland, California 94607, in Alameda County, where the mailing occurred.

On June 18, 2018, I served the following documents: **(1) NOTICE OF VIOLATIONS OF THE CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; (2) CERTIFICATE OF MERIT; (3) THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY** on the following entities by placing a true and correct copy thereof in a sealed envelope with postage fully prepaid for delivery by Certified Mail, addressed to the entity listed below, and placing the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

Current President or CEO  
Whole Foods Market, Inc.  
550 Bowie St.  
Austin, TX 78703-4644

Corporation Service Company dba CSC  
Lawyers Incorporated  
(Registered Agent for Service of Process for  
Whole Foods Market, Inc.)  
221 E. 7th Street, Suite 620  
Austin, TX 78701

Current President or CEO  
Whole Foods Market California, Inc.  
5980 Horton St., Suite 200  
Emeryville, CA 94608

CT Corporation System  
(Registered Agent for Service of Process for  
Whole Foods Market California, Inc.)  
818 West Seventh Street, Suite 930

On June 18, 2018, I served the following documents **(1) NOTICE OF VIOLATIONS OF THE CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; (2) CERTIFICATE OF MERIT; (3) ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE § 25249.7(d)(1)** on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice>:

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

On June 18, 2018, I served the following documents **(1) NOTICE OF VIOLATIONS OF THE CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; (2) CERTIFICATE**

**OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to the party listed below:

Stacey Grassini, Deputy District Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
sgrassini@contracostada.org

Michelle Latimer, Program Coordinator  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
mlatimer@co.lassen.ca.us

Dije Ndreu, Deputy District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
Prop65DA@co.monterey.ca.us

Allison Haley, District Attorney  
Napa County  
931 Parkway Mall  
Napa, CA 94559  
CEPD@countyofnapa.org

Paul E. Zellerbach, District Attorney  
Riverside County  
3072 Orange Street  
Riverside, CA 92501  
Prop65@rivcoda.org

Anne Marie Schubert, District Attorney  
Sacramento County  
901 G Street  
Sacramento, CA 95814  
Prop65@sacda.org

Christopher Dalbey  
Deputy District Attorney  
Santa Barbara County  
1112 Santa Barbara St.  
Santa Barbara, CA 93101  
DAProp65@co.santa-barbara.ca.us

Gregory Alker, Assistant District Attorney  
San Francisco County  
732 Brannan Street  
San Francisco, CA 94103  
gregory.alker@sfgov.org

Yen Dang, Supervising Deputy District Attorney  
Santa Clara County  
70 W Hedding St  
San Jose, CA 95110  
EPU@da.sccgov.org  
Stephan R. Passalacqua, District Attorney  
Sonoma County  
600 Administration Dr.  
Sonoma, CA 95403  
jbarnes@sonoma-county.org

Phillip J. Cline, District Attorney  
Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
Prop65@co.tulare.ca.us

Gregory D. Totten, District Attorney  
Ventura County  
800 S Victoria Ave  
Ventura, CA 93009  
daspecialops@ventura.org

Jeff W. Reisig, District Attorney  
Yolo County  
301 Second Street  
Woodland, CA 95695  
cfepd@yolocounty.org

Nancy O'Malley, District Attorney  
7776 Oakport Street, Suite 650  
Oakland, CA 94621  
CEPDProp65@acgov.org

Kathryn L. Turner, Chief Deputy City  
Attorney  
1200 Third Ave.  
San Diego, CA 92101  
CityAttyCrimProp65@sandiego.gov

Tori Verber Salazar, District Attorney  
222 E. Weber Avenue, Room 202  
Stockton, CA 95202  
DAConsumer.Environmental@sjcda.org

Eric J. Dobroth, Deputy District Attorney  
County Government Center Annex, 4th Floor  
San Luis Obispo, CA 93408  
edobroth@co.slo.ca.us

Jeffrey S. Rosell, District Attorney  
701 Ocean Street  
Santa Cruz, CA 95060  
Prop65DA@santacruzcounty.us

On June 18, 2018, I served the following documents **(1) NOTICE OF VIOLATIONS OF THE CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; (2) CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope with postage fully prepaid for delivery by First Class Mail, addressed to each of the entities on the Service List attached hereto, and placing the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

Executed on June 18, 2018, in Oakland, California.



Daniel Charlier-Smith

## Service List

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

District Attorney  
Amador County  
708 Court Street  
Jackson, CA 95642

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

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

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

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

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

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

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

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

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

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

District Attorney  
Kern County  
1215 Truxtun Avenue  
Bakersfield, CA 93301

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

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

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

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

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

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

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

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

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

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

District Attorney  
Nevada County  
201 Commercial Street  
Nevada City, CA 95959

District Attorney  
Orange County  
401 W. Civic Center Dr.  
Santa Ana, CA 92701

District Attorney  
Placer County  
10810 Justice Center Dr.  
Suite 240  
Roseville, CA 95678

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

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

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

District Attorney  
Shasta County  
1355 West Street Redding,  
CA 96001

District Attorney  
Sierra County  
PO Box 457  
Downieville, CA 95936

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

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

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

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

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

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

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

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

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

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

San Francisco City  
Attorney's Office  
City Hall, Room 234  
1 Dr Carlton B Goodlett Pl.  
San Francisco, CA 94102

San Jose City Attorney's  
Office  
200 East Santa Clara  
Street, 16th Floor  
San Jose, CA 95113