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11 Attorneys for Plaintiff Center for Food Safety

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 BOULDER BRANDS USA, INC., a  
20 Delaware corporation; and GOLDEN BOY  
FOODS, LTD. a Canadian limited company,

21 Defendants.

Case No.: RG18919492

ASSIGNED FOR ALL PURPOSES TO  
JUDGE WINIFRED Y. SMITH  
DEPT. 21

FIRST AMENDED COMPLAINT FOR  
INJUNCTIVE RELIEF AND CIVIL  
PENALTIES

Case filed: September 5, 2018  
Trial Date: None Set

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 defendant Boulder Brands  
27 USA, Inc. and Golden Boy Foods Ltd. (“Defendants”) to warn individuals in California that  
28 they are being exposed to the chemical acrylamide, a substance known to the State of

1 California to cause cancer. These exposures have occurred, and continue to occur through the  
2 manufacture, distribution, sale, and consumption of the following peanut butter products,  
3 which contain the chemical acrylamide (the “Peanut Butter Products”):  
4

- 5 1. Earth Balance Natural Peanut Butter and Flaxseed Creamy
- 6 2. Earth Balance Natural Peanut Butter and Flaxseed Crunchy

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

12 3. When consumers eat the Peanut Butter Products, they are exposed to acrylamide  
13 at levels requiring a “clear and reasonable warning” under Proposition 65. Yet Defendants  
14 have failed to provide any warning to consumers that they are being exposed to the  
15 carcinogenic chemical acrylamide.

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

19 5. Plaintiff seeks injunctive relief enjoining Defendants from the continued  
20 manufacturing, distribution, and/or sales of the Peanut Butter Products in California without  
21 provision of clear and reasonable warnings regarding the risks of cancer posed by exposure to  
22 acrylamide through consumption of the Peanut Butter Products. Plaintiff seeks an injunctive  
23 order compelling Defendants to bring their business practices into compliance with Proposition  
24 65 by providing a clear and reasonable warning to each individual who has been and who in  
25 the future may be exposed to acrylamide from consumption of the Peanut Butter Products.  
26 Plaintiff also seeks an order compelling Defendants to identify and locate each individual  
27 person who in the past has purchased the Peanut Butter Products, and to provide to each such  
28

1 purchaser a clear and reasonable warning that use of the Peanut Butter Products will cause  
2 exposures to acrylamide.

3  
4 **JURISDICTION AND VENUE**

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

10 8. This Court has jurisdiction over Defendants because Defendants are businesses  
11 having sufficient minimum contacts with California, or otherwise intentionally availing  
12 themselves of the California market through the distribution and sale of the Peanut Butter  
13 Products in the State of California to render the exercise of jurisdiction over these Defendants  
14 by the California courts consistent with traditional notions of fair play and substantial justice.

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

17 **PARTIES**

18 10. Plaintiff Center for Food Safety is a non-profit corporation working to protect  
19 human health and the environment by curbing the use of harmful food production technologies  
20 and by promoting organic and other forms of sustainable agriculture. Plaintiff is Center for  
21 Food Safety is a person within the meaning of Health & Safety Code §25118 and brings this  
22 enforcement action in the public interest pursuant to Health & Safety Code §25249.7(d).

24 11. Defendant Boulder Brands USA, Inc. is a corporation organized under the State  
25 of Delaware’s corporation law and is a person doing business within the meaning of Health &  
26 Safety Code § 25249.11.

27 12. Defendant Golden Boy Foods Ltd. is a limited company, organized under the  
28 laws of Canada, and is a person doing business within the meaning of Health & Safety Code §

1 25249.11.

2 13. Defendants have manufactured, packaged, distributed, marketed and/or offered  
3 the Peanut Butter Products for sale or use in California and the County of Alameda. Plaintiff is  
4 informed and believes, and thereupon alleges, that Defendants continue to manufacture,  
5 package, distribute, market and/or sell the Peanut Butter Products in California and in Alameda  
6 County.  
7

8 **STATUTORY BACKGROUND**

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

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

16 No person in the course of doing business shall knowingly and intentionally  
17 expose any individual to a chemical known to the state to cause cancer or  
18 reproductive toxicity without first giving clear and reasonable warning to such  
19 individual....

19 16. “‘Knowingly’ refers only to knowledge of the fact that a discharge of, release of,  
20 or exposure to a chemical listed pursuant to Section 25249.8(a) of the Act is occurring. No  
21 knowledge that the discharge, release or exposure is unlawful is required.” 27 Cal. Code of  
22 Regs. (“CCR”) § 25102(n).

23 17. Proposition 65 provides that any “person who violates or threatens to violate” the  
24 statute may be enjoined in a court of competent jurisdiction. Health & Safety Code § 25249.7.  
25 The phrase “threaten to violate” is defined to mean creating “a condition in which there is a  
26 substantial probability that a violation will occur.” Health & Safety Code § 25249.11(e).  
27 Violators are liable for civil penalties of up to \$2,500 per day for each violation of the Act.  
28 Health & Safety Code § 25249.7.



1 routes of toxic exposure, and the specific product or type of product causing the violations, and  
2 was issued as follows:

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

19 20 21 22 23 24 25 26 27 28  
21. At least 60-days have elapsed since Plaintiff sent the Notices to Defendants.

The appropriate public enforcement agencies have failed to commence and diligently prosecute  
a cause of action under Health & Safety Code § 25249.5, *et seq.* against Defendants based on  
the allegations herein.

22 23 24 25 26 27 28  
22. On information and belief, the Peanut Butter Products have been manufactured,  
distributed, and/or sold by Defendants for consumption in California since at least September  
5, 2015. On information and belief, the Peanut Butter Products continue to be distributed and  
sold in California without the requisite warning information.



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

2 **PRAYER FOR RELIEF**

3 Wherefore, Plaintiff prays for the following relief:

4  
5 1. A preliminary and permanent injunction, pursuant to Health & Safety Code §  
6 25249.7(b), enjoining Defendants, their agents, employees, assigns and all persons acting in  
7 concert or participating with Defendants, from distributing or selling the Peanut Butter  
8 Products in California without first providing a clear and reasonable warning that consumers of  
9 the Peanut Butter Products are exposed to acrylamide;

10 2. An injunctive order, pursuant to Health & Safety Code § 25249.7(b),  
11 compelling Defendants to identify and locate each individual who has purchased the Peanut  
12 Butter Products since September 5, 2015, and to provide a warning to such persons that  
13 consumption of the Peanut Butter Products will expose the consumers to a chemical known to  
14 cause cancer;


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

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

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

21 DATED: July 17, 2019

22 LOZEAU | DRURY LLP

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



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# EXHIBIT A



T 510.836.4200  
F 510.836.4205

410 12th Street, Suite 250  
Oakland, Ca 94607

www.lozeaudrury.com  
rebecca@lozeaudrury.com

June 26, 2018

To: President or CEO – Boulder Brands USA, 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 entity listed below has violated and continues to violate provisions of Proposition 65. Specifically, the entity listed below has violated and continues 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..."

Violator: The name of the violator covered by this notice that violated Proposition 65 (hereinafter referred to as the "Violator") is: Boulder Brands USA, 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:

June 26, 2018

Page 2

1. Earth Balance Natural Peanut Butter and Flaxseed Creamy
2. Earth Balance Natural Peanut Butter and Flaxseed Crunchy

Violation: The alleged Violator knowingly and intentionally exposed and continues to expose consumers within the State of California to acrylamide without providing a Proposition 65 warning. The Violator has 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.

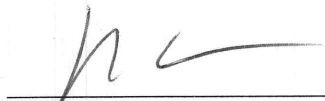
Duration of Violation: The violations have been occurring since at least June 26, 2017, and are ongoing.

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 Violator 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 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), 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)

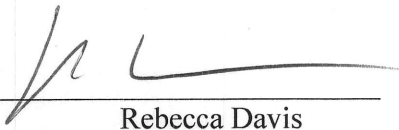
**CERTIFICATE OF MERIT**

**Re: Center for Food Safety's Notice of Proposition 65 Violations by  
Boulder Brands USA, 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 26, 2018

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

**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 26, 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  
Boulder Brands USA, Inc.  
1600 Pearl Street, Ste 300  
Boulder, CO 80302

C T Corporation System  
(Registered Agent for Service of Process for  
Boulder Brands USA, Inc.)  
81141 Francis Avenue  
Indio, CA 92201

On June 26, 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 26, 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

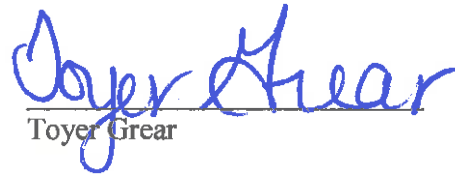
Tori Verber Salazar, District Attorney  
222 E. Weber Avenue, Room 202  
Stockton, CA 95202  
DAConsumer.Environmental@sjcda.org

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 26, 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 26, 2018, in Oakland, California.

  
Toyer Grear

## 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



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# EXHIBIT B



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F 510.836.4205

1939 Harrison Street, Ste. 150  
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www.lozeaudrury.com  
rebecca@lozeaudrury.com

April 15, 2019

To: President or CEO – Golden Boy Foods Ltd.  
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 entity listed below has violated and continues to violate provisions of Proposition 65. Specifically, the entity listed below has violated and continues 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...”

Violator: The name of the violator covered by this notice that violated Proposition 65 (hereinafter referred to as the “Violator”) is Golden Boy Foods Ltd.

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:

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1. Earth Balance Natural Peanut Butter and Flaxseed Creamy
2. Earth Balance Natural Peanut Butter and Flaxseed Crunchy

Violation: The alleged Violator knowingly and intentionally exposed and continues to expose consumers within the State of California to acrylamide without providing a Proposition 65 warning. The Violator has 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 April 15, 2018, 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 Violator 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 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), Lozeau Drury LLP, 1939 Harrison St., Suite 150, Oakland, CA 94612, (510) 836-4200.

Sincerely,



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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  
Golden Boy Foods Ltd.**

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: April 15, 2019

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

## 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 April 15, 2019, 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  
Golden Boy Foods Ltd.  
7725 Lougheed Hwy  
Burnaby, BC V5A 4V8

Current President or CEO  
Golden Boy Foods Ltd.  
30 Citizen Crt.  
Markham, ON L6G 1C4

On April 15, 2019, 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 April 15, 2019, 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

Mark Ankcorn, Deputy City Attorney  
San Diego City Attorney  
1200 Third Ave.  
San Diego, CA 92101  
CityAttyProp65@sandiego.gov

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

Valerie Lopez, Deputy City Attorney  
San Francisco City Attorney  
1390 Market Street, 7th Floor  
San Francisco, CA 94102  
Valerie.Lopez@sfcityatty.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

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

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

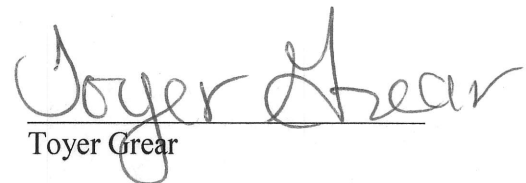
Barbara Yook, District Attorney  
Calaveras County  
891 Mountain Ranch Road  
San Andreas, CA 95249  
Prop65Env@co.calaveras.ca.us

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

Thomas L. Hardy, District Attorney  
Inyo County  
168 North Edwards Street  
Independence, CA 93526  
inyoda@inyocounty.us

On April 15, 2019, 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 April 15, 2019, in Oakland, California.

  
Toyer Grear

## 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  
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  
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  
Hall of Justice  
211 West Temple St.  
Suite 1200  
Los Angeles, CA 90012

District Attorney  
Madera County  
209 West Yosemite Ave.  
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  
303 West Third St.  
San Bernardino, CA 92415

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

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

District Attorney  
Shasta County  
1355 West Street  
Redding, CA 96001

District Attorney  
Sierra County  
100 Courthouse Square  
2nd Floor  
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  
463 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 Jose City Attorney's  
Office  
200 East Santa Clara Street  
16th Floor  
San Jose, CA 95113