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11 Attorneys for Plaintiff Center for Food Safety

12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **COUNTY OF ALAMEDA**

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

16 Plaintiff,

17 vs.

18 SAFEWAY, INC., a Delaware corporation;
19 LUCERNE FOODS, INC., a Delaware
20 corporation; BETTER LIVING BRANDS,
21 LLC, a Delaware limited liability company;
22 and GOLDEN BOY FOODS, LTD., a
23 Canadian limited company,

23 Defendants.

Case No.: RG18918559

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

1 Plaintiff Center for Food Safety (“Plaintiff”) brings this action in the interests of the
2 general public and, on information and belief, hereby alleges:

3 **INTRODUCTION**

4 1. This action seeks to remedy the continuing failure of Defendants Safeway, Inc.,
5 Lucerne Foods, Inc., Better Living Brands, LLC, and Golden Boy Foods, Ltd. (collectively,
6 “Defendants”) to warn individuals in California that they are being exposed to the chemical
7 acrylamide, a substance known to the State of California to cause cancer. These exposures
8 have occurred, and continue to occur through the manufacture, distribution, sale, and
9 consumption of the following peanut butter and almond butter products, which contain the
10 chemical acrylamide (the “Nut Butter Products”):

- 11 1. Open Nature Creamy Almond Butter Salted
- 12 2. Signature Select Creamy Peanut Butter
- 13 3. Signature Select Chunky Peanut Butter
- 14 4. Organics No Stir Creamy Organic Peanut Butter Spread
- 15 5. Organics No Stir Crunchy Organic Peanut Butter Spread
- 16 6. Organics Old Fashioned Crunchy Organic Peanut Butter
- 17 7. Organics Old Fashioned Creamy Organic Peanut Butter
- 18 8. Signature Select Creamy Peanut Spread Reduced Fat
- 19 9. Open Nature Old Fashioned Peanut Butter Crunchy
- 20 10. Open Nature Old Fashioned Peanut Butter Creamy

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

26 12. When consumers eat the Nut Butter Products, they are exposed to acrylamide at
27 levels requiring a “clear and reasonable warning” under Proposition 65. Yet Defendants have
28 failed to provide any warning to consumers that they are being exposed to the carcinogenic

1 chemical acrylamide.

2 13. Defendants' past and continued manufacturing, distribution, and sale of the Nut
3 Butter Products in California without a clear and reasonable warning causes individuals to be
4 involuntarily and unwittingly exposed to acrylamide at levels that violate Proposition 65.
5

6 14. Plaintiff seeks injunctive relief enjoining Defendants from the continued
7 manufacturing, distribution, and/or sales of the Nut Butter Products in California without
8 provision of clear and reasonable warnings regarding the risks of cancer posed by exposure to
9 acrylamide through consumption of the Nut Butter Products. Plaintiff seeks an injunctive order
10 compelling Defendants to bring their business practices into compliance with Proposition 65 by
11 providing a clear and reasonable warning to each individual who has been and who in the
12 future may be exposed to acrylamide from consumption of the Nut Butter Products. Plaintiff
13 also seeks an order compelling Defendants to identify and locate each individual person who in
14 the past has purchased the Nut Butter Products, and to provide to each such purchaser a clear
15 and reasonable warning that use of the Nut Butter Products will cause exposures to acrylamide.
16

17 **JURISDICTION AND VENUE**

18 15. This Court has jurisdiction over this action pursuant to Health and Safety Code §
19 25249.8, allowing enforcement of Proposition 65 in any court of competent jurisdiction, and
20 pursuant to California Constitution Article VI, Section 10, which grants the Superior Court
21 "original jurisdiction in all causes except those given by statute to other trial courts." The
22 causes of actions alleged herein are not given by statute to other trial courts.

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

28 9. Venue in this action is proper in the Alameda Superior Court because

1 Defendants have violated or threaten to violate California law in the County of Alameda.

2 **PARTIES**

3 10. Plaintiff Center for Food Safety is a non-profit corporation working to protect
4 human health and the environment by curbing the use of harmful food production technologies
5 and by promoting organic and other forms of sustainable agriculture. Plaintiff is Center for
6 Food Safety is a person within the meaning of Health & Safety Code §25118 and brings this
7 enforcement action in the public interest pursuant to Health & Safety Code §25249.7(d).
8

9 11. Defendant Safeway, Inc. is a corporation organized under the State of
10 Delaware's corporation law and is a person doing business within the meaning of Health &
11 Safety Code § 25249.11.

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

15 13. Defendant Better Living Brands, LLC is a limited liability company organized
16 under the State of Delaware's corporation law and is a person doing business within the
17 meaning of Health & Safety Code § 25249.11.

18 14. Defendant Golden Boy Foods Ltd. is a limited company, organized under the
19 laws of Canada, and is a person doing business within the meaning of Health & Safety Code §
20 25249.11.

21 15. Defendants have manufactured, packaged, distributed, marketed and/or offered
22 the Nut Butter Products for sale or use in California and the County of Alameda. Plaintiff is
23 informed and believes, and thereupon alleges, that Defendants continue to manufacture,
24 package, distribute, market and/or sell the Nut Butter Products in California and in Alameda
25 County.
26

27 //

28 //

1 **STATUTORY BACKGROUND**

2 16. The People of the State of California have declared in Proposition 65 their right
3 “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other
4 reproductive harm.” Section 1(b) of Initiative Measure, Proposition 65.
5

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

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

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

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

24 20. On January 1, 1990, the State of California officially listed the chemical
25 acrylamide as a chemical known to cause cancer. Acrylamide became subject to the warning
26 requirement one year later and was therefore subject to the “clear and reasonable” warning
27 requirements of Proposition 65 beginning on January 1, 1991. Health & Safety Code §
28 25249.6 *et seq.*; 27 Cal. Code Regs. §§ 25000, *et seq.* Due to the carcinogenicity of
acrylamide, the no significant risk level for acrylamide is 0.2 µg/day (micrograms per day). 27

1 Cal. Code Regs. § 25705(b)(1).

2 **FACTUAL BACKGROUND**

3 21. To test Defendants’ Nut Butter Products for acrylamide, Plaintiff hired a well-
4 respected and accredited testing laboratory. The results of testing undertaken by Plaintiff of
5 the Nut Butter Products show that they were in violation of the 0.2 microgram per day
6 (“µg/day”) for acrylamide “safe harbor” daily dose limits set forth in Proposition 65’s
7 regulations.
8

9 22. Based on the testing results, on June 18, 2018, Plaintiff sent a 60-Day Notice of
10 Proposition 65 Violations (“Notice”) to the requisite public enforcement agencies, and to
11 Defendants (a true and correct copy of the 60-Day Notice letter is attached hereto as **Exhibit A**
12 and is incorporated by reference). On April 15, 2019, Plaintiff sent a 60-Day Notice of
13 Proposition 65 Violations to the requisite public enforcement agencies, and to Defendant
14 Golden Boy Foods, Ltd. (a true and correct copy of the 60-Day Notice letter is attached hereto
15 as **Exhibit B** and is incorporated by reference). The Notices were issued pursuant to, and in
16 compliance with, the requirements of Health & Safety Code §25249.7(d) and the statute’s
17 implementing regulations regarding the notice of the violations to be given to certain public
18 enforcement agencies and to the violators. The Notices included, *inter alia*, the following
19 information: the name, address, and telephone number of the noticing individuals; the name of
20 the alleged violator; the statute violated; the approximate time period during which violations
21 occurred; and descriptions of the violations, including the chemical involved, the routes of
22 toxic exposure, and the specific product or type of product causing the violations, and was
23 issued as follows:
24

- 25 a. Defendants were provided a copy of the Notices by Certified Mail.
26 b. Defendants were provided a copy of a document entitled “The Safe Drinking
27 Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary,”
28 which is also known as Appendix A to Title 27 of Cal. Code Regs. § 25903.

- 1 c. The California Attorney General was provided a copy of the Notices via online
2 submission.
- 3 d. The California Attorney General was provided with a Certificate of Merit by the
4 attorney for the noticing party, stating that there is a reasonable and meritorious
5 case for this action, and attaching factual information sufficient to establish a
6 basis for the certificate, including the identity of the persons consulted with and
7 relied on by the certifier, and the facts, studies, or other data reviewed by those
8 persons, pursuant to Health & Safety Code § 25249.7(h)(2).
- 9 e. The district attorneys, city attorneys or prosecutors of each jurisdiction within
10 which the Nut Butter Products are offered for sale within California were
11 provided with a copy of the Notices pursuant to Health & Safety Code §
12 25249.7(d)(1).
13

14 23. At least 60-days have elapsed since Plaintiff sent the Notices to Defendants.

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

18 24. On information and belief, the Nut Butter Products have been manufactured,
19 distributed, and/or sold by Defendants for consumption in California since at least August 28,
20 2015. On information and belief, the Nut Butter Products continue to be distributed and sold in
21 California without the requisite warning information.

22 25. At all times relevant to this action, Defendants have knowingly and
23 intentionally exposed the users of the Nut Butter Products to acrylamide without first giving a
24 clear and reasonable warning to such individuals.
25

26 26. As a proximate result of acts of Defendants, as persons in the course of doing
27 business within the meaning of Health & Safety Code § 25249.11, individuals throughout the
28 State of California, including in the County of Alameda, have been exposed to acrylamide

1 without a clear and reasonable warning. The individuals subject to the illegal exposures
2 include normal and foreseeable users of the Nut Butter Products, as well as all other persons
3 exposed to the Nut Butter Products.
4

5 **FIRST CAUSE OF ACTION**
6 **(Violations of Health and Safety Code § 25249.5, *et seq.* concerning the Nut Butter**
7 **Products described in the June 18, 2018 and April 14, 2019 Prop. 65 Notices)**
8 **(Against All Defendants)**

9 27. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 26,
10 inclusive, as if specifically set forth herein.

11 28. Defendants are persons doing business within the meaning of Health & Safety
12 Code § 25249.11.

13 29. Acrylamide is listed by the State of California as a chemical known to cause
14 cancer.

15 30. Defendants have and continue to knowingly and intentionally expose
16 individuals who ingest the Nut Butter Products to the chemical acrylamide without first
17 providing a clear and reasonable warning to such individuals pursuant to Health & Safety Code
18 §§ 25249.6 and 25249.11(f).

19 31. Continuing commission by Defendants of the acts alleged above will irreparably
20 harm the citizens of the State of California, for which harm they have no plain, speedy, or
21 adequate remedy at law.

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

23 **PRAYER FOR RELIEF**

24 Wherefore, Plaintiff prays for the following relief:

25 1. A preliminary and permanent injunction, pursuant to Health & Safety Code §
26 25249.7(b), enjoining Defendants, their agents, employees, assigns and all persons acting in
27 concert or participating with Defendants, from distributing or selling the Nut Butter Products in
28 California without first providing a clear and reasonable warning that consumers of the Nut

1 Butter Products are exposed to acrylamide;

2 2. An injunctive order, pursuant to Health & Safety Code § 25249.7(b),
3 compelling Defendants to identify and locate each individual who has purchased the Nut Butter
4 Products since August 28, 2015, and to provide a warning to such persons that consumption of
5 the Nut Butter Products will expose the consumers to a chemical known to cause cancer;
6

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

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

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

13 DATED: July 17, 2019

LOZEAU | DRURY LLP

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Rebecca L. Davis
Attorneys for Plaintiff
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 18, 2018

To: President or CEO – Safeway, Inc.
President or CEO – Lucerne Foods, Inc.
President or CEO – Better Living Brands, LLC
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) Safeway, Inc., 2) Lucerne Foods, Inc., and 3) Better Living Brands, LLC.

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. Open Nature Creamy Almond Butter Salted
2. Signature Select Creamy Peanut Butter
3. Signature Select Chunky Peanut Butter
4. Organics No Stir Creamy Organic Peanut Butter Spread
5. Organics No Stir Crunchy Organic Peanut Butter Spread
6. Organics Old Fashioned Crunchy Organic Peanut Butter
7. Organics Old Fashioned Creamy Organic Peanut Butter
8. Signature Select Creamy Peanut Spread Reduced Fat
9. Open Nature Old Fashioned Peanut Butter Crunchy
10. Open Nature Old Fashioned Peanut Butter Creamy

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

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


June 18, 2018

Page 3

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 Safeway, Inc., Lucerne Foods, Inc., and Better Living Brands, LLC

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

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
Safeway, Inc.
11555 Dublin Canyon Road
Pleasanton, CA 94588

CT Corporation System
(Registered Agent for Service of Process for
Safeway, Inc.)
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

Current President or CEO
Lucerne Foods, Inc.
5918 Stoneridge Mall Road
Pleasanton, CA 94588

CT Corporation System
(Registered Agent for Service of Process for
Lucerne Foods, Inc.)
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

Current President or CEO
Better Living Brands, LLC
P.O. Box 99
Pleasanton, CA 94566

The Corporation Trust Company
(Registered Agent for Service of Process for
Better Living Brands, LLC)
Corporation Trust Center
1209 Orange St.
Wilmington, DE 19801

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

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

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

Yen Dang, Supervising Deputy District Attorney
Santa Clara County
70 W Hedding St
San Jose, CA 95110
EPU@da.sccgov.org

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

Stephan R. Passalacqua, District Attorney
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Sonoma, CA 95403
jbarnes@sonoma-county.org

Allison Haley, District Attorney
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Napa, CA 94559
CEPD@countyofnapa.org

Phillip J. Cline, District Attorney
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221 S Mooney Blvd
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Paul E. Zellerbach, District Attorney
Riverside County
3072 Orange Street
Riverside, CA 92501
Prop65@rivcoda.org

Gregory D. Totten, District Attorney
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Ventura, CA 93009
daspecialops@ventura.org

Anne Marie Schubert, District Attorney
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Sacramento, CA 95814
Prop65@sacda.org

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

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

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

Kathryn L. Turner, Chief Deputy City
Attorney
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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
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Avenue Madera, CA 93637

District Attorney
Marin County
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Room 130
San Rafael, CA 94903

District Attorney Mariposa
County
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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



T 510.836.4200
F 510.836.4205

1939 Harrison Street, Ste. 150
Oakland, CA 94612

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:

1. Open Nature Creamy Almond Butter Salted
2. Signature Select Creamy Peanut Butter
3. Signature Select Chunky Peanut Butter
4. Organics No Stir Creamy Organic Peanut Butter Spread
5. Organics No Stir Crunchy Organic Peanut Butter Spread
6. Organics Old Fashioned Crunchy Organic Peanut Butter
7. Organics Old Fashioned Creamy Organic Peanut Butter
8. Signature Select Creamy Peanut Spread Reduced Fat
9. Open Nature Old Fashioned Peanut Butter Crunchy
10. Open Nature Old Fashioned Peanut Butter Creamy

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 agrees 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.*

April 15, 2019

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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, California, 94612, (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)

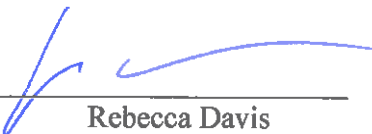
CERTIFICATE OF MERIT

**Re: Center for Food Safety's Notice of Proposition 65 Violations by
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

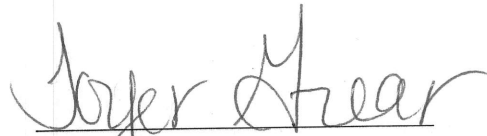
Barbara Yook, District Attorney
Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249
Prop65Env@co.calaveras.ca.us

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