

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Laura Seigle

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF LOS ANGELES**

12 KEY SCIENCES, LLC,

13 Plaintiff,

14 vs.

15 SPROUTS FARMERS MARKETS, LLC, an  
16 Arizona limited liability company;  
17 WALMART, INC., a Delaware corporation;  
18 WHOLE FOODS MARKET, INC., a Texas  
19 corporation;  
20 and DOES 1-90,

21 Defendants.

22 CASE NO. 20STCV30165

23 **COMPLAINT FOR INJUNCTIVE  
24 RELIEF, CIVIL PENALTIES, AND  
25 OTHER RELIEF UNDER HEALTH AND  
26 SAFETY CODE SECTION 25249.5, et seq  
27 (PROPOSITION 65)**

28 Plaintiff Key Sciences, LLC (“Plaintiff” or “Key Sciences”) hereby alleges the following on information and belief:

**INTRODUCTION**

1. This action seeks injunctive and declaratory relief and civil penalties to remedy the continuing failure of Defendants SPROUTS FARMERS MARKETS, LLC (“SPROUTS”), WALMART, INC. (“WALMART”), and WHOLE FOODS MARKET, INC. (“WHOLE FOODS”) to warn consumers in California that they are being exposed to Acrylamide, a

1 chemical known to the State of California to cause cancer and reproductive toxicity and Lead  
2 and Lead Compounds (“Lead”) also a chemical known to the State of California to cause cancer  
3 and reproductive toxicity found in the following products:

- 4 a. Sprouts Farmers Market Organic Waffles - Homestyle (210 g) containing  
5 Acrylamide (“WAFFLES 1”);
- 6 b. 365 Everyday Value Homestyle Waffles (840 g) containing Acrylamide  
7 (“WAFFLES 2”);
- 8 c. 365 Everyday Value Organic Homestyle Waffles (210 g) containing Acrylamide  
9 and Lead (“WAFFLES 3”);
- 10 d. 365 Everyday Value Organic Multigrain Waffles (210 g) containing Acrylamide  
11 (“WAFFLES 4”);
- 12 e. 365 Everyday Value Organic Waffles - Blueberry (210 g) containing Acrylamide  
13 and Lead (“WAFFLES 5”);
- 14 f. 365 Everyday Value Organic Waffles - Flax (210 g) containing Acrylamide  
15 (“WAFFLES 6”);
- 16 g. Great Value Waffles - Blueberry (350 g) containing Acrylamide (“WAFFLES  
17 7”);
- 18 h. WAFFLES 1-7 are together referred to as the “Products.”

19 2. This action is brought in the public interest and is based on The Safe Drinking Water and  
20 Toxic Enforcement Act of 1986 (Health and Safety Code § 25249.6 et seq.) also known as  
21 “Proposition 65.” This statute mandates that any person in the course of doing business must  
22 provide a clear and reasonable warning prior to exposing any individual to a chemical known to  
23 the state to cause cancer, birth defects or other reproductive harm.

### 24 **PARTIES**

25 3. Key Sciences is a limited liability corporation whose mission is to ensure accuracy of  
26 labeling for the benefit and protection of consumers of packaged goods through rigorous

1 scientific testing. Key Sciences is a person within the meaning of Health and Safety Code section  
2 25249.11, subdivision (a). Key Sciences, acting as a private attorney general, brings this action  
3 in the public interest as defined under Health and Safety Code section 25249.7, subdivision (d).

4 4. Defendant SPROUTS is an Arizona limited liability company, doing business in the State  
5 of California at all relevant times herein.

6 5. Defendant WALMART is a Delaware corporation, doing business in the State of  
7 California at all relevant times herein.

8 6. Defendant WHOLE FOODS is a Texas corporation, doing business in the State of  
9 California at all relevant times herein.

10 7. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-90,  
11 and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint  
12 to allege their true names and capacities when ascertained. Plaintiff is informed, believes, and  
13 thereon alleges that each fictitiously named defendant is responsible in some manner for the  
14 occurrences herein alleged and the violations caused thereby. DOES 1-90 are each a person in  
15 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and  
16 25249.11.

17 8. At all times mentioned herein, the term “Defendants” includes SPROUTS, WALMART,  
18 WHOLE FOODS and DOES 1-90.

19 9. Defendants employ ten or more persons and have employed ten or more persons at all  
20 times relevant to this action, and are each a person in the course of doing business within the  
21 meaning of Health and Safety Code §§ 25249.6 and 25249.11.

### 22 **JURISDICTION AND VENUE**

23 10. This Court has jurisdiction pursuant to California Constitution Article VI, Section 10,  
24 which grants the Superior Court original jurisdiction in all causes except those given by statute to  
25 other trial courts. The statute under which this action is brought does not specify any other basis  
26 for jurisdiction.

1 11. This Court has jurisdiction over this action pursuant to Health and Safety Code section  
2 25249.7, which allows enforcement of violations of Proposition 65 in any Court of competent  
3 jurisdiction.

4 12. This Court has jurisdiction over Defendants because Defendants either reside or are  
5 located in this State or are foreign corporations authorized to do business in California, are  
6 registered with the California Secretary of State, or Defendants have sufficient minimum  
7 contacts with California, and otherwise intentionally avails itself of the California market  
8 through the marketing, distribution, and/or sale of Products in the State of California, so as to  
9 render the exercise of jurisdiction over Defendants by the California courts consistent with  
10 traditional notions of fair play and substantial justice.

11 13. Venue is proper in the Los Angeles Superior Court because the cause of action arises out  
12 of violations in the County of Los Angeles and/or because Defendants conducted, and continue  
13 to conduct, business in the County of Los Angeles with respect to the consumer products that are  
14 the subject of this action.

15 14. Plaintiffs seek injunctive and declaratory relief and civil penalties from Defendants'  
16 violations of the prohibitions of Proposition 65 (Health and Safety Code § §25249.5 et seq.)

17 **STATUTORY BACKGROUND**

18 15. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute  
19 passed as "Proposition 65" by close to a two-to-one voting margin.

20 16. Proposition 65 requires that individuals be provided with a "clear and reasonable  
21 warning" before being exposed to substances listed by the State of California as causing cancer  
22 or reproductive toxicity. The warning requirement of Proposition 65 is contained in Health &  
23 Safety Code § 25249.6, which provides,

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

1 17. In this case, the exposures are caused by consumer products. “Consumer product” means  
2 any article, or component part thereof, including food, that is produced, distributed, or sold for  
3 the personal use, consumption or enjoyment of a consumer. (27 California Code of Regulations  
4 § 25600.1(d)) “Consumer product exposure” means an exposure that results from a person's  
5 acquisition, purchase, storage, consumption, or any reasonably foreseeable use of a consumer  
6 product, including consumption of a food. (27 California Code of Regulations § 25600.1(e)).

7 18. Proposition 65 provides that any “person who violates or threatens to violate” the statute  
8 “may be enjoined in a court of competent jurisdiction.” (Health & Safety Code § 25249.7).  
9 Violators are liable for civil penalties of up to \$2,500 per day for each violation of the Act.  
10 (Health & Safety Code §25249.7(b)(1).)

11 19. Violations of Proposition 65 may be enforced by any person in the public interest, after  
12 providing a 60-day notice of the violations of the Attorney General, appropriate District  
13 Attorneys and City Attorneys and the alleged violator. (Health and Safety Code § 25249.7(d)(1).)  
14 Remedies include injunctive relief to prevent actual or threatened violations, and penalties up to  
15 \$2,500 per day per violation. (Health and Safety Code §25249.7(a) and (b).)

16 20. Proposition 65 requires the State to publish a list of chemicals known to cause cancer or  
17 birth defects or other reproductive harm (Health and Safety Code §25249.8.) This list now  
18 comprises over 800 chemicals.

19 21. Proposition 65 establishes a procedure by which the State is to develop a list of chemicals  
20 “known to the State to cause cancer or reproductive toxicity.” (Health & Safety, § 25249.8.)

21 22. Acrylamide was listed as a chemical known to the State of California to cause cancer on  
22 January 1, 1990. Acrylamide became subject to the warning requirement one year later and was  
23 therefore subject to the “clear and reasonable” warning requirements of Proposition 65 beginning  
24 on January 1, 1991. (27 California Code of Regulations § 25000, *et seq.*; Health & Safety Code  
25 §25249.5, *et seq.*) Due to the carcinogenicity of Acrylamide, the no significant risk level is 0.2  
26 micrograms a day. (27 California Code of Regulations § 25705(c)(2).) As a point of reference,

1 one microgram is equal to one millionth of a gram (1 microgram = 1/1,000,000 gram).

2 23. Acrylamide was listed as a chemical known to the State of California to cause  
3 reproductive toxicity on February 25, 2011. Acrylamide became subject to the warning  
4 requirement one year later and was therefore subject to the “clear and reasonable” warning  
5 requirements of Proposition 65 beginning on February 25, 2012. (27 California Code of  
6 Regulations § 25000, *et seq.*; Health & Safety Code § 25249.5, *et seq.*). Due to the toxicity of  
7 Acrylamide, the maximum allowable dose level is 140 micrograms a day. (27 California Code of  
8 Regulations § 25805(b).)

9 24. Lead was listed as a chemical known to the State of California to cause reproductive  
10 toxicity on February 27, 1987. Lead became subject to the warning requirement one year later  
11 and was therefore subject to the “clear and reasonable” warning requirements of Proposition 65  
12 beginning on February 27, 1988. (27 California Code of Regulations § 25000, *et seq.*; Health &  
13 Safety Code § 25249.5, *et seq.*). Due to the toxicity of lead, the maximum allowable dose level is  
14 0.5 micrograms a day. (27 California Code of Regulations § 25805(b).) As a point of reference,  
15 one microgram is equal to one millionth of a gram (1 microgram = 1/1,000,000 gram).

16 25. Lead and lead compounds was listed as a chemical known to the State of California to  
17 cause cancer on October 1, 1992. Lead became subject to the warning requirement one year later  
18 and was therefore subject to the “clear and reasonable” warning requirements of Proposition 65  
19 beginning on October 1, 1993. (27 California Code of Regulations § 25000, *et seq.*; Health &  
20 Safety Code §25249.5, *et seq.*). Due to the carcinogenicity of lead and lead compounds, the no  
21 significant risk level for lead is 15 micrograms a day. (27 California Code of Regulations §  
22 25705(b)(1).)

### 23 **FACTUAL BACKGROUND**

24 26. Defendants are businesses that develop, manufacture, package, distribute, market, and/or  
25 sell the Products in the State of California.

26 27. Plaintiff hired a well-respected and accredited testing laboratory to test Defendant’s

1 Products for Acrylamide and Lead. The results of the testing show that all of the Products  
2 contain Acrylamide and that WAFFLES 3 and WAFFLES 5 contain Acrylamide and Lead.

3 28. Plaintiff has tested a number of products within the same category as the Products at  
4 issue. Comparison of these tests show that the Acrylamide level found in certain of the  
5 Defendants' Products is higher than 81 percent of all of the testing on similar products within the  
6 same category and that the Lead level found in certain of the Defendants' product is higher than  
7 87 percent of all of the testing on similar products within the same category.

8 29. Individuals are exposed to the Acrylamide and Lead when they ingest the Products.

9 30. At all times relevant to this action, Defendants, therefore, have knowingly and  
10 intentionally exposed the users of the Products to Acrylamide and Lead without first giving a  
11 clear and reasonable warning to such individuals. The Products continue to be distributed and  
12 sold in California without providing the requisite warning, and thus the violations are ongoing  
13 and continuous and will continue to occur into the future.

14 31. On May 8, 2020, Plaintiff served SPROUTS and each appropriate public enforcement  
15 agency with a Proposition 65 Notice, a document entitled "Sixty-Day Notice of Intent to Sue for  
16 Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986" ("Notice of Violation  
17 01175") that provided SPROUTS and the public enforcement agency with notice that SPROUTS  
18 was in violation of Proposition 65 for failing to warn purchasers and consumers of the  
19 WAFFLES 1 that ingestion of the product exposes them to Acrylamide, a chemical known to the  
20 State of California to cause cancer and reproductive toxicity. The Notice of Violation is  
21 designated with Attorney General number 2020-01175. The Notice of Violation constitutes  
22 adequate notice to SPROUTS because it provided adequate information to allow SPROUTS to  
23 assess the nature of the alleged violations. A certificate of merit and a certificate of service  
24 accompanied the Notice of Violation, and both certificates comply with Proposition 65 and its  
25 implementing regulations. A true and correct copy of the Notice of Violation is attached here as  
26 Exhibit A and is incorporated herein by reference.

1 32. On May 8, 2020, Plaintiff served WHOLE FOODS and each appropriate public  
2 enforcement agency with a Proposition 65 Notice, a document entitled “Sixty-Day Notice of  
3 Intent to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986”  
4 (“Notice of Violation 01179”) that provided WHOLE FOODS and the public enforcement  
5 agency with notice that WHOLE FOODS was in violation of Proposition 65 for failing to warn  
6 purchasers and consumers of the WAFFLES 2 that ingestion of the product exposes them to  
7 Acrylamide, a chemical known to the State of California to cause cancer and reproductive  
8 toxicity. The Notice of Violation is designated with Attorney General number 2020-01179. The  
9 Notice of Violation constitutes adequate notice to WHOLE FOODS because it provided  
10 adequate information to allow WHOLE FOODS to assess the nature of the alleged violations. A  
11 certificate of merit and a certificate of service accompanied the Notice of Violation, and both  
12 certificates comply with Proposition 65 and its implementing regulations. A true and correct  
13 copy of the Notice of Violation is attached here as Exhibit B and is incorporated herein by  
14 reference.

15 33. On May 8, 2020, Plaintiff served WHOLE FOODS and each appropriate public  
16 enforcement agency with a Proposition 65 Notice, a document entitled “Sixty-Day Notice of  
17 Intent to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986”  
18 (“Notice of Violation 01180”) that provided WHOLE FOODS and the public enforcement  
19 agency with notice that WHOLE FOODS was in violation of Proposition 65 for failing to warn  
20 purchasers and consumers of the WAFFLES 3 that ingestion of the product exposes them to  
21 Acrylamide and Lead, chemicals known to the State of California to cause cancer and  
22 reproductive toxicity. The Notice of Violation is designated with Attorney General number  
23 2020-01180. The Notice of Violation constitutes adequate notice to WHOLE FOODS because it  
24 provided adequate information to allow WHOLE FOODS to assess the nature of the alleged  
25 violations. A certificate of merit and a certificate of service accompanied the Notice of Violation,  
26 and both certificates comply with Proposition 65 and its implementing regulations. A true and



1 correct copy of the Notice of Violation is attached here as Exhibit C and is incorporated herein  
2 by reference.

3 34. On May 8, 2020, Plaintiff served WHOLE FOODS and each appropriate public  
4 enforcement agency with a Proposition 65 Notice, a document entitled “Sixty-Day Notice of  
5 Intent to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986”  
6 (“Notice of Violation 01181”) that provided WHOLE FOODS and the public enforcement  
7 agency with notice that WHOLE FOODS was in violation of Proposition 65 for failing to warn  
8 purchasers and consumers of the WAFFLES 4 that ingestion of the product exposes them to  
9 Acrylamide, a chemical known to the State of California to cause cancer and reproductive  
10 toxicity. The Notice of Violation is designated with Attorney General number 2020-01181. The  
11 Notice of Violation constitutes adequate notice to WHOLE FOODS because it provided  
12 adequate information to allow WHOLE FOODS to assess the nature of the alleged violations. A  
13 certificate of merit and a certificate of service accompanied the Notice of Violation, and both  
14 certificates comply with Proposition 65 and its implementing regulations. A true and correct  
15 copy of the Notice of Violation is attached here as Exhibit D and is incorporated herein by  
16 reference.

17 35. On May 8, 2020, Plaintiff served WHOLE FOODS and each appropriate public  
18 enforcement agency with a Proposition 65 Notice, a document entitled “Sixty-Day Notice of  
19 Intent to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986”  
20 (“Notice of Violation 01182”) that provided WHOLE FOODS and the public enforcement  
21 agency with notice that WHOLE FOODS was in violation of Proposition 65 for failing to warn  
22 purchasers and consumers of the WAFFLES 5 that ingestion of the product exposes them to  
23 Acrylamide and Lead, chemicals known to the State of California to cause cancer and  
24 reproductive toxicity. The Notice of Violation is designated with Attorney General number  
25 2020-01182. The Notice of Violation constitutes adequate notice to WHOLE FOODS because it  
26 provided adequate information to allow WHOLE FOODS to assess the nature of the alleged

1 violations. A certificate of merit and a certificate of service accompanied the Notice of Violation,  
2 and both certificates comply with Proposition 65 and its implementing regulations. A true and  
3 correct copy of the Notice of Violation is attached here as Exhibit E and is incorporated herein  
4 by reference.

5 36. On May 8, 2020, Plaintiff served WHOLE FOODS and each appropriate public  
6 enforcement agency with a Proposition 65 Notice, a document entitled “Sixty-Day Notice of  
7 Intent to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986”  
8 (“Notice of Violation 01183”) that provided WHOLE FOODS and the public enforcement  
9 agency with notice that WHOLE FOODS was in violation of Proposition 65 for failing to warn  
10 purchasers and consumers of the WAFFLES 6 that ingestion of the product exposes them to  
11 Acrylamide, a chemical known to the State of California to cause cancer and reproductive  
12 toxicity. The Notice of Violation is designated with Attorney General number 2020-01183. The  
13 Notice of Violation constitutes adequate notice to WHOLE FOODS because it provided  
14 adequate information to allow WHOLE FOODS to assess the nature of the alleged violations. A  
15 certificate of merit and a certificate of service accompanied the Notice of Violation, and both  
16 certificates comply with Proposition 65 and its implementing regulations. A true and correct  
17 copy of the Notice of Violation is attached here as Exhibit F and is incorporated herein by  
18 reference.

19 37. On May 8, 2020, Plaintiff served WALMART and each appropriate public enforcement  
20 agency with a Proposition 65 Notice, a document entitled “Sixty-Day Notice of Intent to Sue for  
21 Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“Notice of Violation  
22 01184”) that provided WALMART and the public enforcement agency with notice that  
23 WALMART was in violation of Proposition 65 for failing to warn purchasers and consumers of  
24 the WAFFLES 7 that ingestion of the product exposes them to Acrylamide, a chemical known to  
25 the State of California to cause cancer and reproductive toxicity. The Notice of Violation is  
26 designated with Attorney General number 2020-01184. The Notice of Violation constitutes

1 adequate notice to WALMART because it provided adequate information to allow WALMART  
2 to assess the nature of the alleged violations. A certificate of merit and a certificate of service  
3 accompanied the Notice of Violation, and both certificates comply with Proposition 65 and its  
4 implementing regulations. A true and correct copy of the Notice of Violation is attached here as  
5 Exhibit G and is incorporated herein by reference.

6 38. More than 60 days have passed since Plaintiff mailed the Notice of Violations 01175,  
7 01179, 01180, 01181, 01182, 01183, and 01184 (together the “Notices”) and no public  
8 enforcement entity has filed a Complaint in this case.

9 39. As a proximate result of acts by Defendants, persons in the course of doing business  
10 within the meaning of Health & Safety Code § 25249.11(b), individuals throughout the State of  
11 California, including in the County of Los Angeles, have been exposed to Acrylamide and Lead  
12 without a clear and reasonable warning.

13 **FIRST CAUSE OF ACTION**  
14 **(Violation of Health & Safety Code § 25249.6, Failure to Provide Clear and Reasonable**  
15 **Warning under Proposition 65 – Against SPROUTS and DOES 1-10)**

16 40. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 39, inclusive, as if  
17 superficially set forth herein.

18 41. By committing the acts alleged above, SPROUTS and DOES 1-10 have, in the course of  
19 doing business, knowingly and intentionally exposed users of the WAFFLES 1 to Acrylamide, a  
20 chemical known to the State of California to cause cancer and reproductive toxicity without first  
21 giving clear and reasonable warning to such individuals within the meaning of Health & Safety  
22 Code § 25249.6 and continue to violate the statute with each successive sale of the WAFFLES 1.

23 42. Said violations render SPROUTS and DOES 1-10 liable for civil penalties, up to \$2,500  
24 per day for each violation, and subject SPROUTS and DOES 1-10 to injunction.

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1 **SECOND CAUSE OF ACTION**

2 **(Violation of Health & Safety Code § 25249.6, Failure to Provide Clear and Reasonable**  
3 **Warning under Proposition 65 – Against WHOLE FOODS and DOES 11-20)**

4 43. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 42, inclusive, as if  
5 superficially set forth herein.

6 44. By committing the acts alleged above, WHOLE FOODS and DOES 11-20 have, in the  
7 course of doing business, knowingly and intentionally exposed users of the WAFFLES 2 to  
8 Acrylamide, a chemical known to the State of California to cause cancer and reproductive  
9 toxicity without first giving clear and reasonable warning to such individuals within the meaning  
10 of Health & Safety Code § 25249.6 and continue to violate the statute with each successive sale  
11 of the WAFFLES 2.

12 45. Said violations render WHOLE FOODS and DOES 11-20 liable for civil penalties, up to  
13 \$2,500 per day for each violation, and subject WHOLE FOODS and DOES 11-20 to injunction.

14 **THIRD CAUSE OF ACTION**

15 **(Violation of Health & Safety Code § 25249.6, Failure to Provide Clear and Reasonable**  
16 **Warning under Proposition 65 – Against WHOLE FOODS and DOES 21-30)**

17 46. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 45, inclusive, as if  
18 superficially set forth herein.

19 47. By committing the acts alleged above, WHOLE FOODS and DOES 21-30 have, in the  
20 course of doing business, knowingly and intentionally exposed users of the WAFFLES 3 to  
21 Acrylamide, a chemical known to the State of California to cause cancer and reproductive  
22 toxicity without first giving clear and reasonable warning to such individuals within the meaning  
23 of Health & Safety Code § 25249.6 and continue to violate the statute with each successive sale  
24 of the WAFFLES 3.

25 48. Said violations render WHOLE FOODS and 21-30 liable for civil penalties, up to \$2,500  
26 per day for each violation, and subject WHOLE FOODS and DOES 21-30 to injunction

1 **FOURTH CAUSE OF ACTION**

2 **(Violation of Health & Safety Code § 25249.6, Failure to Provide Clear and Reasonable**  
3 **Warning under Proposition 65 – Against WHOLE FOODS and DOES 31-40)**

4 49. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 48, inclusive, as if  
5 superficially set forth herein.

6 50. By committing the acts alleged above, WHOLE FOODS and DOES 31-40 have, in the  
7 course of doing business, knowingly and intentionally exposed users of the WAFFLES 3 to  
8 Lead, a chemical known to the State of California to cause cancer and reproductive toxicity  
9 without first giving clear and reasonable warning to such individuals within the meaning of  
10 Health & Safety Code § 25249.6 and continue to violate the statute with each successive sale of  
11 the WAFFLES 3.

12 51. Said violations render WHOLE FOODS and DOES 31-40 liable for civil penalties, up to  
13 \$2,500 per day for each violation, and subject WHOLE FOODS and DOES 31-40 to injunction.

14 **FIFTH CAUSE OF ACTION**

15 **(Violation of Health & Safety Code § 25249.6, Failure to Provide Clear and Reasonable**  
16 **Warning under Proposition 65 – Against WHOLE FOODS and DOES 41-50)**

17 52. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 51, inclusive, as if  
18 superficially set forth herein.

19 53. By committing the acts alleged above, WHOLE FOODS and DOES 41-50 have, in the  
20 course of doing business, knowingly and intentionally exposed users of the WAFFLES 4 to  
21 Acrylamide, a chemical known to the State of California to cause cancer and reproductive  
22 toxicity without first giving clear and reasonable warning to such individuals within the meaning  
23 of Health & Safety Code § 25249.6 and continue to violate the statute with each successive sale  
24 of the WAFFLES 4.

25 54. Said violations render WHOLE FOODS and DOES 41-50 liable for civil penalties, up to  
26 \$2,500 per day for each violation, and subject WHOLE FOODS and DOES 41-50 to injunction.

1 **SIXTH CAUSE OF ACTION**

2 **(Violation of Health & Safety Code § 25249.6, Failure to Provide Clear and Reasonable**  
3 **Warning under Proposition 65 – Against WHOLE FOODS and DOES 51-60)**

4 55. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 54, inclusive, as if  
5 superficially set forth herein.

6 56. By committing the acts alleged above, WHOLE FOODS and DOES 51-60 have, in the  
7 course of doing business, knowingly and intentionally exposed users of the WAFFLES 5 to  
8 Acrylamide, a chemical known to the State of California to cause cancer and reproductive  
9 toxicity without first giving clear and reasonable warning to such individuals within the meaning  
10 of Health & Safety Code § 25249.6 and continue to violate the statute with each successive sale  
11 of the WAFFLES 5.

12 57. Said violations render WHOLE FOODS and DOES 51-60 liable for civil penalties, up to  
13 \$2,500 per day for each violation, and subject WHOLE FOODS and DOES 51-60 to injunction.

14 **SEVENTH CAUSE OF ACTION**

15 **(Violation of Health & Safety Code § 25249.6, Failure to Provide Clear and Reasonable**  
16 **Warning under Proposition 65 – Against WHOLE FOODS and DOES 61-70)**

17 58. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 57, inclusive, as if  
18 superficially set forth herein.

19 59. By committing the acts alleged above, WHOLE FOODS and DOES 61-70 have, in the  
20 course of doing business, knowingly and intentionally exposed users of the WAFFLES 5 to  
21 Lead, a chemical known to the State of California to cause cancer and reproductive toxicity  
22 without first giving clear and reasonable warning to such individuals within the meaning of  
23 Health & Safety Code § 25249.6 and continue to violate the statute with each successive sale of  
24 the WAFFLES 5.

25 60. Said violations render WHOLE FOODS and DOES 61-70 liable for civil penalties, up to  
26 \$2,500 per day for each violation, and subject WHOLE FOODS and DOES 61-70 to injunction.

1 **EIGHTH CAUSE OF ACTION**

2 **(Violation of Health & Safety Code § 25249.6, Failure to Provide Clear and Reasonable**  
3 **Warning under Proposition 65 – Against WHOLE FOODS and DOES 71-80)**

4 61. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 60, inclusive, as if  
5 superficially set forth herein.

6 62. By committing the acts alleged above, WHOLE FOODS and DOES 71-80 have, in the  
7 course of doing business, knowingly and intentionally exposed users of the WAFFLES 6 to  
8 Acrylamide, a chemical known to the State of California to cause cancer and reproductive  
9 toxicity without first giving clear and reasonable warning to such individuals within the meaning  
10 of Health & Safety Code § 25249.6 and continue to violate the statute with each successive sale  
11 of the WAFFLES 6.

12 63. Said violations render WHOLE FOODS and DOES 71-80 liable for civil penalties, up to  
13 \$2,500 per day for each violation, and subject WHOLE FOODS and DOES 71-80 to injunction.

14 **NINETH CAUSE OF ACTION**

15 **(Violation of Health & Safety Code § 25249.6, Failure to Provide Clear and Reasonable**  
16 **Warning under Proposition 65 – Against WALMART and DOES 81-90)**

17 64. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 63, inclusive, as if  
18 superficially set forth herein.

19 65. By committing the acts alleged above, WALMART and DOES 81-90 have, in the course  
20 of doing business, knowingly and intentionally exposed users of the WAFFLES 7 to Acrylamide,  
21 a chemical known to the State of California to cause cancer and reproductive toxicity without  
22 first giving clear and reasonable warning to such individuals within the meaning of Health &  
23 Safety Code § 25249.6 and continue to violate the statute with each successive sale of the  
24 WAFFLES 7.

25 66. Said violations render WALMART and DOES 81-90 liable for civil penalties, up to  
26 \$2,500 per day for each violation, and subject WALMART and DOES 81-90 to injunction.





# **EXHIBIT A**



SIXTY-DAY NOTICE OF INTENT TO SUE FOR VIOLATION OF THE SAFE DRINKING  
WATER AND TOXIC ENFORCEMENT ACT OF 1986  
(*Cal. Health & Safety Code § 25249.5, et seq.*) (“Proposition 65”)

May 8, 2020

Re: Violations of Proposition 65 concerning food products containing Acrylamide

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

Davitt, Lalley, Dey, & McHale, PC (“DLDM”) represents Key Sciences (“Key Sciences”), a limited liability company acting in the interest of the general public to promote awareness of exposures to toxic chemicals in products sold in California and to improve human health by reducing hazardous substances contained in such items.

Key Sciences has identified violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violators identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, DLDM intends to file a private enforcement action on behalf of Key Sciences 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**General Information about Proposition 65.** A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is attached with the copy of this letter served to the alleged Violators identified below.

**Alleged Violators.** The names of the companies covered by this notice that violated Proposition 65 (hereinafter the “Violators”) are:

**SPROUTS FARMER’S MARKET, LLC**

**Consumer Products and Listed Chemical.** The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

**Sprouts Farmers Market Organic Waffles - Homestyle (210 g)**

On January 1, 1990, the State of California officially listed acrylamide as a chemical known to cause cancer. On February 25, 2011, the State of California officially listed acrylamide as a chemical known to cause developmental toxicity and male reproductive toxicity.

It should be noted that Key Sciences may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

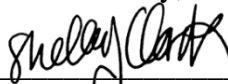
**Route of Exposure.** The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least April 9, 2020, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, Key Sciences is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of these products; (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. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time-consuming litigation.

Key Sciences has retained me as legal counsel in connection with this matter. Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated below.

Sincerely,



---

Shelley Clark

Associate Attorney

Davitt, Lalley, Dey, & McHale, PC

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Sprouts Farmer's Market LLC and their Registered Agents for Service of Process only)

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

**CERTIFICATE OF MERIT**

**Re: Davitt, Lalley, Dey, & McHale, PC's Notice of Proposition 65 Violations by Sprouts Famer's Market LLC**

I, Shelley Clark, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged 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 Associate Attorney for the noticing party.
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 on 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 Violators 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 served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, 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: May 8, 2020



---

Shelley Clark

**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

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 and over the age of 18 years of age. My business address is 707 17th Street, Denver, CO. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Denver, CO.

On May 8, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
Sprouts Farmer’s Market, LLC  
2 N North Central Ave #2200  
Phoenix, AZ 85004

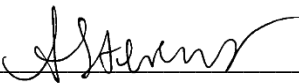
Mark P Goss  
Sprouts Farmer’s Market, LLC  
2 N North Central Ave #2200  
Phoenix, AZ 85004

On May 8, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served 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  
Post Office Box 70550  
Oakland, CA 94612-0550

On May 8, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT**; on each of the parties on the Service List attached hereto by placing a true and correct .PDF copy thereof to be sent via electronic mail to the parties listed below, pursuant to Cal. Code Regs., title 27, §25903(c)(I) or via First Class Mail through the United States Postal Service by placing a true and correct copy in a sealed envelope, addressed to the entity listed below and providing such an envelope to a United States Postal Service Representative.

Executed on May 8, 2020, in Denver, CO

  
\_\_\_\_\_  
Allison Stevens

**List for Service by Electronic Mail**

|  |   |
|--|---|
| Alameda County District Attorney<br><a href="mailto:CEPDProp65@acgov.org">CEPDProp65@acgov.org</a>                         | Calaveras County District Attorney<br><a href="mailto:Prop65Env@co.calaveras.ca.us">Prop65Env@co.calaveras.ca.us</a>                  |
| Contra Costa County District Attorney<br><a href="mailto:sgrassini@contracostada.org">sgrassini@contracostada.org</a>      | Inyo County District Attorney<br><a href="mailto:inyoda@inyocounty.us">inyoda@inyocounty.us</a>                                       |
| Lassen County District Attorney<br><a href="mailto:mlatimer@co.lassen.ca.us">mlatimer@co.lassen.ca.us</a>                  | Monterey County District Attorney<br><a href="mailto:Prop65DA@co.monterey.ca.us">Prop65DA@co.monterey.ca.us</a>                       |
| Napa County District Attorney<br><a href="mailto:CEPD@countyofnapa.org">CEPD@countyofnapa.org</a>                          | Riverside County District Attorney<br><a href="mailto:Prop65@rivcoda.org">Prop65@rivcoda.org</a>                                      |
| Sacramento County District Attorney<br><a href="mailto:Prop65@sacda.org">Prop65@sacda.org</a>                              | San Diego City Attorney<br><a href="mailto:CityAttyProp65@sandiego.gov">CityAttyProp65@sandiego.gov</a>                               |
| San Diego County District Attorney<br><a href="mailto:CityAttyCrimProp65@sandiego.gov">CityAttyCrimProp65@sandiego.gov</a> | San Francisco County District Attorney<br><a href="mailto:Gregory.alker@sfgov.org">Gregory.alker@sfgov.org</a>                        |
| San Francisco City Attorney<br><a href="mailto:Valerie.Lopez@sfcityatty.org">Valerie.Lopez@sfcityatty.org</a>              | San Joaquin County District Attorney DA<br><a href="mailto:DAConsumer.Environmental@sjcda.org">DAConsumer.Environmental@sjcda.org</a> |
| San Luis Obispo County District Attorney<br><a href="mailto:edobroth@co.slo.ca.us">edobroth@co.slo.ca.us</a>               | Santa Barbara County District Attorney<br><a href="mailto:DAProp65@co.santa-barbara.ca.us">DAProp65@co.santa-barbara.ca.us</a>        |
| Santa Clara County District Attorney<br><a href="mailto:EPU@da.sccgov.org">EPU@da.sccgov.org</a>                           | Santa Cruz County District Attorney<br><a href="mailto:Prop65DA@santacruzcounty.us">Prop65DA@santacruzcounty.us</a>                   |
| Sonoma County District Attorney<br><a href="mailto:jbarnes@sonoma-county.org">jbarnes@sonoma-county.org</a>                | Tulare County District Attorney<br><a href="mailto:Prop65@co.tulare.ca.us">Prop65@co.tulare.ca.us</a>                                 |
| Ventura County District Attorney<br><a href="mailto:daspecialops@ventura.org">daspecialops@ventura.org</a>                 | Yolo County District Attorney<br><a href="mailto:cfepd@yolocounty.org">cfepd@yolocounty.org</a>                                       |

## **List for Service by Mail**

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

District Attorney, Amador County  
708 Court Street, Suite 202  
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  
778 Pacific St.  
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 4<sup>th</sup> Floor  
Eureka, CA 95501

District Attorney, Imperial County  
940 West Main Street, 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 Street  
Lakeport, CA 95453

District Attorney, Los Angeles County  
Hall of Justice 211 West Temple St., Ste  
1200  
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 West Civic Center Drive  
Santa Ana, CA 92701

District Attorney, Placer County  
10810 Justice Center Drive, Ste 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 Street  
San Bernardino, CA 92415

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

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

District Attorney, Shasta County  
1355 West Street  
Redding, CA 96001

District Attorney, Sierra County  
100 Courthouse Square, 2<sup>nd</sup> Floor  
Downieville, CA 95936

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

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

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

District Attorney, Sutter County  
463 2<sup>nd</sup> 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 Street, Suite  
800  
Los Angeles, CA 90012

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

# **EXHIBIT B**





SIXTY-DAY NOTICE OF INTENT TO SUE FOR VIOLATION OF THE SAFE DRINKING  
WATER AND TOXIC ENFORCEMENT ACT OF 1986  
(*Cal. Health & Safety Code § 25249.5, et seq.*) (“Proposition 65”)

May 8, 2020

Re: Violations of Proposition 65 concerning food products containing Acrylamide

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

Davitt, Lalley, Dey, & McHale, PC (“DLDM”) represents Key Sciences (“Key Sciences”), a limited liability company acting in the interest of the general public to promote awareness of exposures to toxic chemicals in products sold in California and to improve human health by reducing hazardous substances contained in such items.

Key Sciences has identified violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violators identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, DLDM intends to file a private enforcement action on behalf of Key Sciences 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**General Information about Proposition 65.** A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is attached with the copy of this letter served to the alleged Violators identified below.

**Alleged Violators.** The names of the companies covered by this notice that violated Proposition 65 (hereinafter the “Violators”) are:

**WHOLE FOODS MARKET, INC.**

**Consumer Products and Listed Chemical.** The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

**365 Everyday Value Homestyle Waffles (840 g)**

On January 1, 1990, the State of California officially listed acrylamide as a chemical known to cause cancer. On February 25, 2011, the State of California officially listed acrylamide as a chemical known to cause developmental toxicity and male reproductive toxicity.

It should be noted that Key Sciences may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

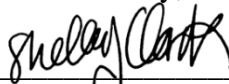
**Route of Exposure.** The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least April 9, 2020, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, Key Sciences is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of these products; (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. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time-consuming litigation.

Key Sciences has retained me as legal counsel in connection with this matter. Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated below.

Sincerely,



---

Shelley Clark

Associate Attorney

Davitt, Lalley, Dey, & McHale, PC

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Whole Foods Market, Inc. and their Registered Agents for Service of Process only)

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

**CERTIFICATE OF MERIT**

**Re: Davitt, Lalley, Dey, & McHale, PC's Notice of Proposition 65 Violations by Whole Foods Market, Inc.**

I, Shelley Clark, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged 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 Associate Attorney for the noticing party.

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 on 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 Violators 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 served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, 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: May 8, 2020



---

Shelley Clark

**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

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 and over the age of 18 years of age. My business address is 707 17th Street, Denver, CO. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Denver, CO.

On May 8, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

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

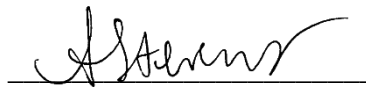
C T Corporation  
Whole Foods Market, Inc.  
1999 Bryan Street, Ste. 900  
Dallas, TX 75201

On May 8, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served 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  
Post Office Box 70550  
Oakland, CA 94612-0550

On May 8, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT**; on each of the parties on the Service List attached hereto by placing a true and correct .PDF copy thereof to be sent via electronic mail to the parties listed below, pursuant to Cal. Code Regs., title. 27, §25903(c)(I) or via First Class Mail through the United States Postal Service by placing a true and correct copy in a sealed envelope, addressed to the entity listed below and providing such an envelope to a United States Postal Service Representative.

Executed on May 8, 2020, in Denver, CO

  
\_\_\_\_\_  
Allison Stevens

**List for Service by Electronic Mail**

|  |   |
|--|---|
| Alameda County District Attorney<br><a href="mailto:CEPDProp65@acgov.org">CEPDProp65@acgov.org</a>                         | Calaveras County District Attorney<br><a href="mailto:Prop65Env@co.calaveras.ca.us">Prop65Env@co.calaveras.ca.us</a>                  |
| Contra Costa County District Attorney<br><a href="mailto:sgrassini@contracostada.org">sgrassini@contracostada.org</a>      | Inyo County District Attorney<br><a href="mailto:inyoda@inyocounty.us">inyoda@inyocounty.us</a>                                       |
| Lassen County District Attorney<br><a href="mailto:mlatimer@co.lassen.ca.us">mlatimer@co.lassen.ca.us</a>                  | Monterey County District Attorney<br><a href="mailto:Prop65DA@co.monterey.ca.us">Prop65DA@co.monterey.ca.us</a>                       |
| Napa County District Attorney<br><a href="mailto:CEPD@countyofnapa.org">CEPD@countyofnapa.org</a>                          | Riverside County District Attorney<br><a href="mailto:Prop65@rivcoda.org">Prop65@rivcoda.org</a>                                      |
| Sacramento County District Attorney<br><a href="mailto:Prop65@sacda.org">Prop65@sacda.org</a>                              | San Diego City Attorney<br><a href="mailto:CityAttyProp65@sandiego.gov">CityAttyProp65@sandiego.gov</a>                               |
| San Diego County District Attorney<br><a href="mailto:CityAttyCrimProp65@sandiego.gov">CityAttyCrimProp65@sandiego.gov</a> | San Francisco County District Attorney<br><a href="mailto:Gregory.alker@sfgov.org">Gregory.alker@sfgov.org</a>                        |
| San Francisco City Attorney<br><a href="mailto:Valerie.Lopez@sfcityatty.org">Valerie.Lopez@sfcityatty.org</a>              | San Joaquin County District Attorney DA<br><a href="mailto:DAConsumer.Environmental@sjcda.org">DAConsumer.Environmental@sjcda.org</a> |
| San Luis Obispo County District Attorney<br><a href="mailto:edobroth@co.slo.ca.us">edobroth@co.slo.ca.us</a>               | Santa Barbara County District Attorney<br><a href="mailto:DAProp65@co.santa-barbara.ca.us">DAProp65@co.santa-barbara.ca.us</a>        |
| Santa Clara County District Attorney<br><a href="mailto:EPU@da.sccgov.org">EPU@da.sccgov.org</a>                           | Santa Cruz County District Attorney<br><a href="mailto:Prop65DA@santacruzcounty.us">Prop65DA@santacruzcounty.us</a>                   |
| Sonoma County District Attorney<br><a href="mailto:jbarnes@sonoma-county.org">jbarnes@sonoma-county.org</a>                | Tulare County District Attorney<br><a href="mailto:Prop65@co.tulare.ca.us">Prop65@co.tulare.ca.us</a>                                 |
| Ventura County District Attorney<br><a href="mailto:daspecialops@ventura.org">daspecialops@ventura.org</a>                 | Yolo County District Attorney<br><a href="mailto:cfepd@yolocounty.org">cfepd@yolocounty.org</a>                                       |

## **List for Service by Mail**

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

District Attorney, Amador County  
708 Court Street, Suite 202  
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  
778 Pacific St.  
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 4<sup>th</sup> Floor  
Eureka, CA 95501

District Attorney, Imperial County  
940 West Main Street, 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 Street  
Lakeport, CA 95453

District Attorney, Los Angeles County  
Hall of Justice 211 West Temple St., Ste  
1200  
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 West Civic Center Drive  
Santa Ana, CA 92701

District Attorney, Placer County  
10810 Justice Center Drive, Ste 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 Street  
San Bernardino, CA 92415

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

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

District Attorney, Shasta County  
1355 West Street  
Redding, CA 96001

District Attorney, Sierra County  
100 Courthouse Square, 2<sup>nd</sup> Floor  
Downieville, CA 95936

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

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

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

District Attorney, Sutter County  
463 2<sup>nd</sup> 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 Street, Suite  
800  
Los Angeles, CA 90012

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

# **EXHIBIT C**



SIXTY-DAY NOTICE OF INTENT TO SUE FOR VIOLATION OF THE SAFE DRINKING  
WATER AND TOXIC ENFORCEMENT ACT OF 1986  
(*Cal. Health & Safety Code § 25249.5, et seq.*) (“Proposition 65”)

May 8, 2020

Re: Violations of Proposition 65 concerning food products containing Acrylamide and Lead and Lead compounds (“Lead”)

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

Davitt, Lalley, Dey, & McHale, PC (“DLDM”) represents Key Sciences (“Key Sciences”), a limited liability company acting in the interest of the general public to promote awareness of exposures to toxic chemicals in products sold in California and to improve human health by reducing hazardous substances contained in such items.

Key Sciences has identified violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violators identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, DLDM intends to file a private enforcement action on behalf of Key Sciences 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**General Information about Proposition 65.** A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is attached with the copy of this letter served to the alleged Violators identified below.

**Alleged Violators.** The names of the companies covered by this notice that violated Proposition 65 (hereinafter the “Violators”) are:

**WHOLE FOODS MARKET, INC.**

**Consumer Products and Listed Chemical.** The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

**365 Everyday Value Organic Homestyle Waffles (210 g)**

On January 1, 1990, the State of California officially listed acrylamide as a chemical known to cause cancer. On February 25, 2011, the State of California officially listed acrylamide as a chemical known to cause developmental toxicity and male reproductive toxicity. On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the



State of California officially listed lead and lead compounds as chemicals known to cause cancer.

It should be noted that Key Sciences may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

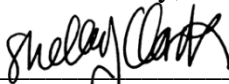
**Route of Exposure.** The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least April 9, 2020, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, Key Sciences is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of these products; (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. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time-consuming litigation.

Key Sciences has retained me as legal counsel in connection with this matter. Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated below.

Sincerely,



---

Shelley Clark

Associate Attorney

Davitt, Lalley, Dey, & McHale, PC

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Whole Foods Market, Inc. and their Registered Agents for Service of Process only)

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

**CERTIFICATE OF MERIT**

**Re: Davitt, Lalley, Dey, & McHale, PC's Notice of Proposition 65 Violations by Whole Foods Market, Inc.**

I, Shelley Clark, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged 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 Associate Attorney for the noticing party.
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 on 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 Violators 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 served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, 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: May 8, 2020



---

Shelley Clark

**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

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 and over the age of 18 years of age. My business address is 707 17th Street, Denver, CO. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Denver, CO.

On May 8, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

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

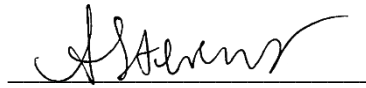
C T Corporation  
Whole Foods Market, Inc.  
1999 Bryan Street, Ste. 900  
Dallas, TX 75201

On May 8, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served 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  
Post Office Box 70550  
Oakland, CA 94612-0550

On May 8, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT**; on each of the parties on the Service List attached hereto by placing a true and correct .PDF copy thereof to be sent via electronic mail to the parties listed below, pursuant to Cal. Code Regs., title. 27, §25903(c)(I) or via First Class Mail through the United States Postal Service by placing a true and correct copy in a sealed envelope, addressed to the entity listed below and providing such an envelope to a United States Postal Service Representative.

Executed on May 8, 2020, in Denver, CO

  
\_\_\_\_\_  
Allison Stevens

**List for Service by Electronic Mail**

|  |   |
|--|---|
| Alameda County District Attorney<br><a href="mailto:CEPDProp65@acgov.org">CEPDProp65@acgov.org</a>                         | Calaveras County District Attorney<br><a href="mailto:Prop65Env@co.calaveras.ca.us">Prop65Env@co.calaveras.ca.us</a>                  |
| Contra Costa County District Attorney<br><a href="mailto:sgrassini@contracostada.org">sgrassini@contracostada.org</a>      | Inyo County District Attorney<br><a href="mailto:inyoda@inyocounty.us">inyoda@inyocounty.us</a>                                       |
| Lassen County District Attorney<br><a href="mailto:mlatimer@co.lassen.ca.us">mlatimer@co.lassen.ca.us</a>                  | Monterey County District Attorney<br><a href="mailto:Prop65DA@co.monterey.ca.us">Prop65DA@co.monterey.ca.us</a>                       |
| Napa County District Attorney<br><a href="mailto:CEPD@countyofnapa.org">CEPD@countyofnapa.org</a>                          | Riverside County District Attorney<br><a href="mailto:Prop65@rivcoda.org">Prop65@rivcoda.org</a>                                      |
| Sacramento County District Attorney<br><a href="mailto:Prop65@sacda.org">Prop65@sacda.org</a>                              | San Diego City Attorney<br><a href="mailto:CityAttyProp65@sandiego.gov">CityAttyProp65@sandiego.gov</a>                               |
| San Diego County District Attorney<br><a href="mailto:CityAttyCrimProp65@sandiego.gov">CityAttyCrimProp65@sandiego.gov</a> | San Francisco County District Attorney<br><a href="mailto:Gregory.alker@sfgov.org">Gregory.alker@sfgov.org</a>                        |
| San Francisco City Attorney<br><a href="mailto:Valerie.Lopez@sfcityatty.org">Valerie.Lopez@sfcityatty.org</a>              | San Joaquin County District Attorney DA<br><a href="mailto:DAConsumer.Environmental@sjcda.org">DAConsumer.Environmental@sjcda.org</a> |
| San Luis Obispo County District Attorney<br><a href="mailto:edobroth@co.slo.ca.us">edobroth@co.slo.ca.us</a>               | Santa Barbara County District Attorney<br><a href="mailto:DAProp65@co.santa-barbara.ca.us">DAProp65@co.santa-barbara.ca.us</a>        |
| Santa Clara County District Attorney<br><a href="mailto:EPU@da.sccgov.org">EPU@da.sccgov.org</a>                           | Santa Cruz County District Attorney<br><a href="mailto:Prop65DA@santacruzcounty.us">Prop65DA@santacruzcounty.us</a>                   |
| Sonoma County District Attorney<br><a href="mailto:jbarnes@sonoma-county.org">jbarnes@sonoma-county.org</a>                | Tulare County District Attorney<br><a href="mailto:Prop65@co.tulare.ca.us">Prop65@co.tulare.ca.us</a>                                 |
| Ventura County District Attorney<br><a href="mailto:daspecialops@ventura.org">daspecialops@ventura.org</a>                 | Yolo County District Attorney<br><a href="mailto:cfepd@yolocounty.org">cfepd@yolocounty.org</a>                                       |

## **List for Service by Mail**

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

District Attorney, Amador County  
708 Court Street, Suite 202  
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  
778 Pacific St.  
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 4<sup>th</sup> Floor  
Eureka, CA 95501

District Attorney, Imperial County  
940 West Main Street, 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 Street  
Lakeport, CA 95453

District Attorney, Los Angeles County  
Hall of Justice 211 West Temple St., Ste  
1200  
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 West Civic Center Drive  
Santa Ana, CA 92701

District Attorney, Placer County  
10810 Justice Center Drive, Ste 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 Street  
San Bernardino, CA 92415

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

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

District Attorney, Shasta County  
1355 West Street  
Redding, CA 96001

District Attorney, Sierra County  
100 Courthouse Square, 2<sup>nd</sup> Floor  
Downieville, CA 95936

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

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

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

District Attorney, Sutter County  
463 2<sup>nd</sup> 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 Street, Suite  
800  
Los Angeles, CA 90012

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

# **EXHIBIT D**



SIXTY-DAY NOTICE OF INTENT TO SUE FOR VIOLATION OF THE SAFE DRINKING  
WATER AND TOXIC ENFORCEMENT ACT OF 1986  
(*Cal. Health & Safety Code § 25249.5, et seq.*) (“Proposition 65”)

May 8, 2020

Re: Violations of Proposition 65 concerning food products containing Acrylamide

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

Davitt, Lalley, Dey, & McHale, PC (“DLDM”) represents Key Sciences (“Key Sciences”), a limited liability company acting in the interest of the general public to promote awareness of exposures to toxic chemicals in products sold in California and to improve human health by reducing hazardous substances contained in such items.

Key Sciences has identified violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violators identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, DLDM intends to file a private enforcement action on behalf of Key Sciences 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**General Information about Proposition 65.** A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is attached with the copy of this letter served to the alleged Violators identified below.

**Alleged Violators.** The names of the companies covered by this notice that violated Proposition 65 (hereinafter the “Violators”) are:

**WHOLE FOODS MARKET, INC.**

**Consumer Products and Listed Chemical.** The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

**365 Everyday Value Organic Multigrain Waffles (210 g)**

On January 1, 1990, the State of California officially listed acrylamide as a chemical known to cause cancer. On February 25, 2011, the State of California officially listed acrylamide as a chemical known to cause developmental toxicity and male reproductive toxicity.

It should be noted that Key Sciences may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

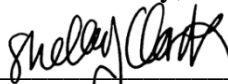
**Route of Exposure.** The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least April 8, 2020, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, Key Sciences is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of these products; (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. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time-consuming litigation.

Key Sciences has retained me as legal counsel in connection with this matter. Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated below.

Sincerely,



---

Shelley Clark

Associate Attorney

Davitt, Lalley, Dey, & McHale, PC

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Whole Foods Market, Inc. and their Registered Agents for Service of Process only)

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



**CERTIFICATE OF MERIT**

**Re: Davitt, Lalley, Dey, & McHale, PC's Notice of Proposition 65 Violations by Whole Foods Market, Inc.**

I, Shelley Clark, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged 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 Associate Attorney for the noticing party.
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 on 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 Violators 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 served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, 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: May 8, 2020



---

Shelley Clark

**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

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 and over the age of 18 years of age. My business address is 707 17th Street, Denver, CO. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Denver, CO.

On May 8, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

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

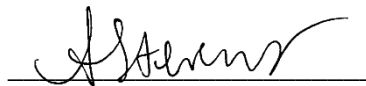
C T Corporation  
Whole Foods Market, Inc.  
1999 Bryan Street, Ste. 900  
Dallas, TX 75201

On May 8, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served 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  
Post Office Box 70550  
Oakland, CA 94612-0550

On May 8, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT**; on each of the parties on the Service List attached hereto by placing a true and correct .PDF copy thereof to be sent via electronic mail to the parties listed below, pursuant to Cal. Code Regs., title. 27, §25903(c)(I) or via First Class Mail through the United States Postal Service by placing a true and correct copy in a sealed envelope, addressed to the entity listed below and providing such an envelope to a United States Postal Service Representative.

Executed on May 8, 2020, in Denver, CO

  
Allison Stevens

**List for Service by Electronic Mail**

|  |   |
|--|---|
| Alameda County District Attorney<br><a href="mailto:CEPDProp65@acgov.org">CEPDProp65@acgov.org</a>                         | Calaveras County District Attorney<br><a href="mailto:Prop65Env@co.calaveras.ca.us">Prop65Env@co.calaveras.ca.us</a>                  |
| Contra Costa County District Attorney<br><a href="mailto:sgrassini@contracostada.org">sgrassini@contracostada.org</a>      | Inyo County District Attorney<br><a href="mailto:inyoda@inyocounty.us">inyoda@inyocounty.us</a>                                       |
| Lassen County District Attorney<br><a href="mailto:mlatimer@co.lassen.ca.us">mlatimer@co.lassen.ca.us</a>                  | Monterey County District Attorney<br><a href="mailto:Prop65DA@co.monterey.ca.us">Prop65DA@co.monterey.ca.us</a>                       |
| Napa County District Attorney<br><a href="mailto:CEPD@countyofnapa.org">CEPD@countyofnapa.org</a>                          | Riverside County District Attorney<br><a href="mailto:Prop65@rivcoda.org">Prop65@rivcoda.org</a>                                      |
| Sacramento County District Attorney<br><a href="mailto:Prop65@sacda.org">Prop65@sacda.org</a>                              | San Diego City Attorney<br><a href="mailto:CityAttyProp65@sandiego.gov">CityAttyProp65@sandiego.gov</a>                               |
| San Diego County District Attorney<br><a href="mailto:CityAttyCrimProp65@sandiego.gov">CityAttyCrimProp65@sandiego.gov</a> | San Francisco County District Attorney<br><a href="mailto:Gregory.alker@sfgov.org">Gregory.alker@sfgov.org</a>                        |
| San Francisco City Attorney<br><a href="mailto:Valerie.Lopez@sfcityatty.org">Valerie.Lopez@sfcityatty.org</a>              | San Joaquin County District Attorney DA<br><a href="mailto:DAConsumer.Environmental@sjcda.org">DAConsumer.Environmental@sjcda.org</a> |
| San Luis Obispo County District Attorney<br><a href="mailto:edobroth@co.slo.ca.us">edobroth@co.slo.ca.us</a>               | Santa Barbara County District Attorney<br><a href="mailto:DAProp65@co.santa-barbara.ca.us">DAProp65@co.santa-barbara.ca.us</a>        |
| Santa Clara County District Attorney<br><a href="mailto:EPU@da.sccgov.org">EPU@da.sccgov.org</a>                           | Santa Cruz County District Attorney<br><a href="mailto:Prop65DA@santacruzcounty.us">Prop65DA@santacruzcounty.us</a>                   |
| Sonoma County District Attorney<br><a href="mailto:jbarnes@sonoma-county.org">jbarnes@sonoma-county.org</a>                | Tulare County District Attorney<br><a href="mailto:Prop65@co.tulare.ca.us">Prop65@co.tulare.ca.us</a>                                 |
| Ventura County District Attorney<br><a href="mailto:daspecialops@ventura.org">daspecialops@ventura.org</a>                 | Yolo County District Attorney<br><a href="mailto:cfepd@yolocounty.org">cfepd@yolocounty.org</a>                                       |

## **List for Service by Mail**

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

District Attorney, Amador County  
708 Court Street, Suite 202  
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  
778 Pacific St.  
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 4<sup>th</sup> Floor  
Eureka, CA 95501

District Attorney, Imperial County  
940 West Main Street, 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 Street  
Lakeport, CA 95453

District Attorney, Los Angeles County  
Hall of Justice 211 West Temple St., Ste  
1200  
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 West Civic Center Drive  
Santa Ana, CA 92701

District Attorney, Placer County  
10810 Justice Center Drive, Ste 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 Street  
San Bernardino, CA 92415

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

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

District Attorney, Shasta County  
1355 West Street  
Redding, CA 96001

District Attorney, Sierra County  
100 Courthouse Square, 2<sup>nd</sup> Floor  
Downieville, CA 95936

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

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

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

District Attorney, Sutter County  
463 2<sup>nd</sup> 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 Street, Suite  
800  
Los Angeles, CA 90012

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

# **EXHIBIT E**



SIXTY-DAY NOTICE OF INTENT TO SUE FOR VIOLATION OF THE SAFE DRINKING  
WATER AND TOXIC ENFORCEMENT ACT OF 1986  
(*Cal. Health & Safety Code § 25249.5, et seq.*) (“Proposition 65”)

May 8, 2020

Re: Violations of Proposition 65 concerning food products containing Acrylamide and Lead and Lead compounds (“Lead”)

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

Davitt, Lalley, Dey, & McHale, PC (“DLDM”) represents Key Sciences (“Key Sciences”), a limited liability company acting in the interest of the general public to promote awareness of exposures to toxic chemicals in products sold in California and to improve human health by reducing hazardous substances contained in such items.

Key Sciences has identified violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violators identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, DLDM intends to file a private enforcement action on behalf of Key Sciences 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**General Information about Proposition 65.** A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is attached with the copy of this letter served to the alleged Violators identified below.

**Alleged Violators.** The names of the companies covered by this notice that violated Proposition 65 (hereinafter the “Violators”) are:

**WHOLE FOODS MARKET, INC.**

**Consumer Products and Listed Chemical.** The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

**365 Everyday Value Organic Waffles - Blueberry (210 g)**

On January 1, 1990, the State of California officially listed acrylamide as a chemical known to cause cancer. On February 25, 2011, the State of California officially listed acrylamide as a chemical known to cause developmental toxicity and male reproductive toxicity. On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the

State of California officially listed lead and lead compounds as chemicals known to cause cancer.

It should be noted that Key Sciences may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

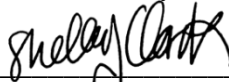
**Route of Exposure.** The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least April 9, 2020, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, Key Sciences is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of these products; (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. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time-consuming litigation.

Key Sciences has retained me as legal counsel in connection with this matter. Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated below.

Sincerely,



---

Shelley Clark

Associate Attorney

Davitt, Lalley, Dey, & McHale, PC

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Whole Foods Market, Inc. and their Registered Agents for Service of Process only)

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

**CERTIFICATE OF MERIT**

**Re: Davitt, Lalley, Dey, & McHale, PC's Notice of Proposition 65 Violations by Whole Foods Market, Inc.**

I, Shelley Clark, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged 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 Associate Attorney for the noticing party.
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 on 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 Violators 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 served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, 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: May 8, 2020



---

Shelley Clark



**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

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 and over the age of 18 years of age. My business address is 707 17th Street, Denver, CO. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Denver, CO.

On May 8, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

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

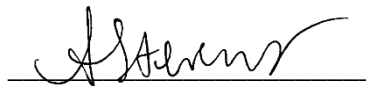
C T Corporation  
Whole Foods Market, Inc.  
1999 Bryan Street, Ste. 900  
Dallas, TX 75201

On May 8, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served 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  
Post Office Box 70550  
Oakland, CA 94612-0550

On May 8, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT**; on each of the parties on the Service List attached hereto by placing a true and correct .PDF copy thereof to be sent via electronic mail to the parties listed below, pursuant to Cal. Code Regs., title. 27, §25903(c)(1) or via First Class Mail through the United States Postal Service by placing a true and correct copy in a sealed envelope, addressed to the entity listed below and providing such an envelope to a United States Postal Service Representative.

Executed on May 8, 2020, in Denver, CO

  
\_\_\_\_\_  
Allison Stevens

**List for Service by Electronic Mail**

|  |   |
|--|---|
| Alameda County District Attorney<br><a href="mailto:CEPDProp65@acgov.org">CEPDProp65@acgov.org</a>                         | Calaveras County District Attorney<br><a href="mailto:Prop65Env@co.calaveras.ca.us">Prop65Env@co.calaveras.ca.us</a>                  |
| Contra Costa County District Attorney<br><a href="mailto:sgrassini@contracostada.org">sgrassini@contracostada.org</a>      | Inyo County District Attorney<br><a href="mailto:inyoda@inyocounty.us">inyoda@inyocounty.us</a>                                       |
| Lassen County District Attorney<br><a href="mailto:mlatimer@co.lassen.ca.us">mlatimer@co.lassen.ca.us</a>                  | Monterey County District Attorney<br><a href="mailto:Prop65DA@co.monterey.ca.us">Prop65DA@co.monterey.ca.us</a>                       |
| Napa County District Attorney<br><a href="mailto:CEPD@countyofnapa.org">CEPD@countyofnapa.org</a>                          | Riverside County District Attorney<br><a href="mailto:Prop65@rivcoda.org">Prop65@rivcoda.org</a>                                      |
| Sacramento County District Attorney<br><a href="mailto:Prop65@sacda.org">Prop65@sacda.org</a>                              | San Diego City Attorney<br><a href="mailto:CityAttyProp65@sandiego.gov">CityAttyProp65@sandiego.gov</a>                               |
| San Diego County District Attorney<br><a href="mailto:CityAttyCrimProp65@sandiego.gov">CityAttyCrimProp65@sandiego.gov</a> | San Francisco County District Attorney<br><a href="mailto:Gregory.alker@sfgov.org">Gregory.alker@sfgov.org</a>                        |
| San Francisco City Attorney<br><a href="mailto:Valerie.Lopez@sfcityatty.org">Valerie.Lopez@sfcityatty.org</a>              | San Joaquin County District Attorney DA<br><a href="mailto:DAConsumer.Environmental@sjcda.org">DAConsumer.Environmental@sjcda.org</a> |
| San Luis Obispo County District Attorney<br><a href="mailto:edobroth@co.slo.ca.us">edobroth@co.slo.ca.us</a>               | Santa Barbara County District Attorney<br><a href="mailto:DAProp65@co.santa-barbara.ca.us">DAProp65@co.santa-barbara.ca.us</a>        |
| Santa Clara County District Attorney<br><a href="mailto:EPU@da.sccgov.org">EPU@da.sccgov.org</a>                           | Santa Cruz County District Attorney<br><a href="mailto:Prop65DA@santacruzcounty.us">Prop65DA@santacruzcounty.us</a>                   |
| Sonoma County District Attorney<br><a href="mailto:jbarnes@sonoma-county.org">jbarnes@sonoma-county.org</a>                | Tulare County District Attorney<br><a href="mailto:Prop65@co.tulare.ca.us">Prop65@co.tulare.ca.us</a>                                 |
| Ventura County District Attorney<br><a href="mailto:daspecialops@ventura.org">daspecialops@ventura.org</a>                 | Yolo County District Attorney<br><a href="mailto:cfepd@yolocounty.org">cfepd@yolocounty.org</a>                                       |

## **List for Service by Mail**

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

District Attorney, Amador County  
708 Court Street, Suite 202  
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  
778 Pacific St.  
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 4<sup>th</sup> Floor  
Eureka, CA 95501

District Attorney, Imperial County  
940 West Main Street, 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 Street  
Lakeport, CA 95453

District Attorney, Los Angeles County  
Hall of Justice 211 West Temple St., Ste  
1200  
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 West Civic Center Drive  
Santa Ana, CA 92701

District Attorney, Placer County  
10810 Justice Center Drive, Ste 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 Street  
San Bernardino, CA 92415

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

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

District Attorney, Shasta County  
1355 West Street  
Redding, CA 96001

District Attorney, Sierra County  
100 Courthouse Square, 2<sup>nd</sup> Floor  
Downieville, CA 95936

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

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

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

District Attorney, Sutter County  
463 2<sup>nd</sup> 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 Street, Suite  
800  
Los Angeles, CA 90012

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

# **EXHIBIT F**



SIXTY-DAY NOTICE OF INTENT TO SUE FOR VIOLATION OF THE SAFE DRINKING  
WATER AND TOXIC ENFORCEMENT ACT OF 1986  
(*Cal. Health & Safety Code § 25249.5, et seq.*) (“Proposition 65”)

May 8, 2020

Re: Violations of Proposition 65 concerning food products containing Acrylamide

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

Davitt, Lalley, Dey, & McHale, PC (“DLDM”) represents Key Sciences (“Key Sciences”), a limited liability company acting in the interest of the general public to promote awareness of exposures to toxic chemicals in products sold in California and to improve human health by reducing hazardous substances contained in such items.

Key Sciences has identified violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violators identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, DLDM intends to file a private enforcement action on behalf of Key Sciences 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**General Information about Proposition 65.** A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is attached with the copy of this letter served to the alleged Violators identified below.

**Alleged Violators.** The names of the companies covered by this notice that violated Proposition 65 (hereinafter the “Violators”) are:

**WHOLE FOODS MARKET, INC.**

**Consumer Products and Listed Chemical.** The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

**365 Everyday Value Organic Waffles - Flax (210 g)**

On January 1, 1990, the State of California officially listed acrylamide as a chemical known to cause cancer. On February 25, 2011, the State of California officially listed acrylamide as a chemical known to cause developmental toxicity and male reproductive toxicity.

It should be noted that Key Sciences may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

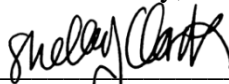
**Route of Exposure.** The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least April 9, 2020, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, Key Sciences is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of these products; (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. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time-consuming litigation.

Key Sciences has retained me as legal counsel in connection with this matter. Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated below.

Sincerely,



---

Shelley Clark

Associate Attorney

Davitt, Lalley, Dey, & McHale, PC

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Whole Foods Market, Inc. and their Registered Agents for Service of Process only)

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

**CERTIFICATE OF MERIT**

**Re: Davitt, Lalley, Dey, & McHale, PC's Notice of Proposition 65 Violations by Whole Foods Market, Inc.**

I, Shelley Clark, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged 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 Associate Attorney for the noticing party.
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 on 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 Violators 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 served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, 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: May 8, 2020



---

Shelley Clark

**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

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 and over the age of 18 years of age. My business address is 707 17th Street, Denver, CO. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Denver, CO.

On May 8, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

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

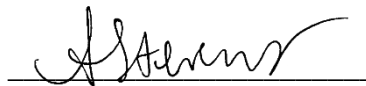
C T Corporation  
Whole Foods Market, Inc.  
1999 Bryan Street, Ste. 900  
Dallas, TX 75201

On May 8, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served 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  
Post Office Box 70550  
Oakland, CA 94612-0550

On May 8, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT**; on each of the parties on the Service List attached hereto by placing a true and correct .PDF copy thereof to be sent via electronic mail to the parties listed below, pursuant to Cal. Code Regs., title. 27, §25903(c)(1) or via First Class Mail through the United States Postal Service by placing a true and correct copy in a sealed envelope, addressed to the entity listed below and providing such an envelope to a United States Postal Service Representative.

Executed on May 8, 2020, in Denver, CO

  
\_\_\_\_\_  
Allison Stevens



**List for Service by Electronic Mail**

|  |   |
|--|---|
| Alameda County District Attorney<br><a href="mailto:CEPDProp65@acgov.org">CEPDProp65@acgov.org</a>                         | Calaveras County District Attorney<br><a href="mailto:Prop65Env@co.calaveras.ca.us">Prop65Env@co.calaveras.ca.us</a>                  |
| Contra Costa County District Attorney<br><a href="mailto:sgrassini@contracostada.org">sgrassini@contracostada.org</a>      | Inyo County District Attorney<br><a href="mailto:inyoda@inyocounty.us">inyoda@inyocounty.us</a>                                       |
| Lassen County District Attorney<br><a href="mailto:mlatimer@co.lassen.ca.us">mlatimer@co.lassen.ca.us</a>                  | Monterey County District Attorney<br><a href="mailto:Prop65DA@co.monterey.ca.us">Prop65DA@co.monterey.ca.us</a>                       |
| Napa County District Attorney<br><a href="mailto:CEPD@countyofnapa.org">CEPD@countyofnapa.org</a>                          | Riverside County District Attorney<br><a href="mailto:Prop65@rivcoda.org">Prop65@rivcoda.org</a>                                      |
| Sacramento County District Attorney<br><a href="mailto:Prop65@sacda.org">Prop65@sacda.org</a>                              | San Diego City Attorney<br><a href="mailto:CityAttyProp65@sandiego.gov">CityAttyProp65@sandiego.gov</a>                               |
| San Diego County District Attorney<br><a href="mailto:CityAttyCrimProp65@sandiego.gov">CityAttyCrimProp65@sandiego.gov</a> | San Francisco County District Attorney<br><a href="mailto:Gregory.alker@sfgov.org">Gregory.alker@sfgov.org</a>                        |
| San Francisco City Attorney<br><a href="mailto:Valerie.Lopez@sfcityatty.org">Valerie.Lopez@sfcityatty.org</a>              | San Joaquin County District Attorney DA<br><a href="mailto:DAConsumer.Environmental@sjcda.org">DAConsumer.Environmental@sjcda.org</a> |
| San Luis Obispo County District Attorney<br><a href="mailto:edobroth@co.slo.ca.us">edobroth@co.slo.ca.us</a>               | Santa Barbara County District Attorney<br><a href="mailto:DAProp65@co.santa-barbara.ca.us">DAProp65@co.santa-barbara.ca.us</a>        |
| Santa Clara County District Attorney<br><a href="mailto:EPU@da.sccgov.org">EPU@da.sccgov.org</a>                           | Santa Cruz County District Attorney<br><a href="mailto:Prop65DA@santacruzcounty.us">Prop65DA@santacruzcounty.us</a>                   |
| Sonoma County District Attorney<br><a href="mailto:jbarnes@sonoma-county.org">jbarnes@sonoma-county.org</a>                | Tulare County District Attorney<br><a href="mailto:Prop65@co.tulare.ca.us">Prop65@co.tulare.ca.us</a>                                 |
| Ventura County District Attorney<br><a href="mailto:daspecialops@ventura.org">daspecialops@ventura.org</a>                 | Yolo County District Attorney<br><a href="mailto:cfepd@yolocounty.org">cfepd@yolocounty.org</a>                                       |

## **List for Service by Mail**

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

District Attorney, Amador County  
708 Court Street, Suite 202  
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  
778 Pacific St.  
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 4<sup>th</sup> Floor  
Eureka, CA 95501

District Attorney, Imperial County  
940 West Main Street, 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 Street  
Lakeport, CA 95453

District Attorney, Los Angeles County  
Hall of Justice 211 West Temple St., Ste  
1200  
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 West Civic Center Drive  
Santa Ana, CA 92701

District Attorney, Placer County  
10810 Justice Center Drive, Ste 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 Street  
San Bernardino, CA 92415

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

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

District Attorney, Shasta County  
1355 West Street  
Redding, CA 96001

District Attorney, Sierra County  
100 Courthouse Square, 2<sup>nd</sup> Floor  
Downieville, CA 95936

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

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

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

District Attorney, Sutter County  
463 2<sup>nd</sup> 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 Street, Suite  
800  
Los Angeles, CA 90012

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

# **EXHIBIT G**



SIXTY-DAY NOTICE OF INTENT TO SUE FOR VIOLATION OF THE SAFE DRINKING  
WATER AND TOXIC ENFORCEMENT ACT OF 1986  
(*Cal. Health & Safety Code § 25249.5, et seq.*) (“Proposition 65”)

May 8, 2020

Re: Violations of Proposition 65 concerning food products containing Acrylamide

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

Davitt, Lalley, Dey, & McHale, PC (“DLDM”) represents Key Sciences (“Key Sciences”), a limited liability company acting in the interest of the general public to promote awareness of exposures to toxic chemicals in products sold in California and to improve human health by reducing hazardous substances contained in such items.

Key Sciences has identified violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violators identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, DLDM intends to file a private enforcement action on behalf of Key Sciences 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**General Information about Proposition 65.** A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is attached with the copy of this letter served to the alleged Violators identified below.

**Alleged Violators.** The names of the companies covered by this notice that violated Proposition 65 (hereinafter the “Violators”) are:

**WALMART, INC.**

**Consumer Products and Listed Chemical.** The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

**Great Value Waffles - Blueberry (350 g)**

On January 1, 1990, the State of California officially listed acrylamide as a chemical known to cause cancer. On February 25, 2011, the State of California officially listed acrylamide as a chemical known to cause developmental toxicity and male reproductive toxicity.

It should be noted that Key Sciences may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

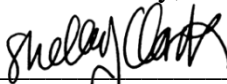
**Route of Exposure.** The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least April 9, 2020, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, Key Sciences is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of these products; (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. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time-consuming litigation.

Key Sciences has retained me as legal counsel in connection with this matter. Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated below.

Sincerely,



---

Shelley Clark

Associate Attorney

Davitt, Lalley, Dey, & McHale, PC

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Walmart, Inc. and their Registered Agents for Service of Process only)

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

**CERTIFICATE OF MERIT**

**Re: Davitt, Lalley, Dey, & McHale, PC's Notice of Proposition 65 Violations by Walmart, Inc.**

I, Shelley Clark, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged 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 Associate Attorney for the noticing party.

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 on 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 Violators 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 served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, 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: May 8, 2020



---

Shelley Clark

**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

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 and over the age of 18 years of age. My business address is 707 17th Street, Denver, CO. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Denver, CO.

On May 8, 2020, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

The Corporation Trust Company  
Walmart, Inc.  
702 SW 8<sup>th</sup> St.  
Bentonville, Arkansas 72716


Corporation Trust Center  
Walmart, Inc.  
1209 Orange St.  
Wilmington, Delaware 19801

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

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Executed on May 8, 2020, in Denver, CO

  
\_\_\_\_\_  
Allison Stevens

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| Contra Costa County District Attorney<br><a href="mailto:sgrassini@contracostada.org">sgrassini@contracostada.org</a>      | Inyo County District Attorney<br><a href="mailto:inyoda@inyocounty.us">inyoda@inyocounty.us</a>                                       |
| Lassen County District Attorney<br><a href="mailto:mlatimer@co.lassen.ca.us">mlatimer@co.lassen.ca.us</a>                  | Monterey County District Attorney<br><a href="mailto:Prop65DA@co.monterey.ca.us">Prop65DA@co.monterey.ca.us</a>                       |
| Napa County District Attorney<br><a href="mailto:CEPD@countyofnapa.org">CEPD@countyofnapa.org</a>                          | Riverside County District Attorney<br><a href="mailto:Prop65@rivcoda.org">Prop65@rivcoda.org</a>                                      |
| Sacramento County District Attorney<br><a href="mailto:Prop65@sacda.org">Prop65@sacda.org</a>                              | San Diego City Attorney<br><a href="mailto:CityAttyProp65@sandiego.gov">CityAttyProp65@sandiego.gov</a>                               |
| San Diego County District Attorney<br><a href="mailto:CityAttyCrimProp65@sandiego.gov">CityAttyCrimProp65@sandiego.gov</a> | San Francisco County District Attorney<br><a href="mailto:Gregory.alker@sfgov.org">Gregory.alker@sfgov.org</a>                        |
| San Francisco City Attorney<br><a href="mailto:Valerie.Lopez@sfcityatty.org">Valerie.Lopez@sfcityatty.org</a>              | San Joaquin County District Attorney DA<br><a href="mailto:DAConsumer.Environmental@sjcda.org">DAConsumer.Environmental@sjcda.org</a> |
| San Luis Obispo County District Attorney<br><a href="mailto:edobroth@co.slo.ca.us">edobroth@co.slo.ca.us</a>               | Santa Barbara County District Attorney<br><a href="mailto:DAProp65@co.santa-barbara.ca.us">DAProp65@co.santa-barbara.ca.us</a>        |
| Santa Clara County District Attorney<br><a href="mailto:EPU@da.sccgov.org">EPU@da.sccgov.org</a>                           | Santa Cruz County District Attorney<br><a href="mailto:Prop65DA@santacruzcounty.us">Prop65DA@santacruzcounty.us</a>                   |
| Sonoma County District Attorney<br><a href="mailto:jbarnes@sonoma-county.org">jbarnes@sonoma-county.org</a>                | Tulare County District Attorney<br><a href="mailto:Prop65@co.tulare.ca.us">Prop65@co.tulare.ca.us</a>                                 |
| Ventura County District Attorney<br><a href="mailto:daspecialops@ventura.org">daspecialops@ventura.org</a>                 | Yolo County District Attorney<br><a href="mailto:cfepd@yolocounty.org">cfepd@yolocounty.org</a>                                       |



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Colusa, CA 95932

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Crescent City, CA 95531

District Attorney, El Dorado  
County  
778 Pacific St.  
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 4<sup>th</sup> Floor  
Eureka, CA 95501

District Attorney, Imperial County  
940 West Main Street, 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 Street  
Lakeport, CA 95453

District Attorney, Los Angeles County  
Hall of Justice 211 West Temple St., Ste  
1200  
Los Angeles, CA 90012

District Attorney, Madera County  
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District Attorney, Mariposa County  
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10810 Justice Center Drive, Ste 240  
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Hollister, CA 95023

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303 West Third Street  
San Bernardino, CA 92415

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Redwood City, CA 94063

District Attorney, Shasta County  
1355 West Street  
Redding, CA 96001

District Attorney, Sierra County  
100 Courthouse Square, 2<sup>nd</sup> Floor  
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District Attorney, Siskiyou County  
Post Office Box 986  
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District Attorney, Solano County  
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Fairfield, CA 94533

District Attorney, Stanislaus County  
832 12th Street, Ste 300  
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463 2<sup>nd</sup> Street  
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District Attorney, Trinity County  
Post Office Box 310  
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District Attorney, Tuolumne County  
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Sonora, CA 95370

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Los Angeles, CA 90012

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