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Attorneys for Plaintiff
CALSAFE RESEARCH CENTER, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE-CENTRAL JUDICIAL DISTRICT

CALSAFE RESEARCH CENTER, INC., a
California non-profit corporation

Plaintiff,

v.

EARTHLY TREATS, INC. (D/B/A/ REAL
FOOD FROM THE GROUND UP); and DOES
1 to 10,

Defendants.

CASE No.: 30-2021-01193600-CU-TT-CC

**FIRST AMENDED COMPLAINT FOR
PERMANENT INJUNCTION, CIVIL
PENALTIES AND OTHER RELIEF**

Health & Safety Code §25249.5, *et seq.*

Complaint filed: April 5, 2021

Plaintiff CALSAFE RESEARCH CENTER, INC. ("PLAINTIFF" or "CRC") brings this
action in the interests of the general public and, on information and belief, hereby alleges:

I. INTRODUCTION

1. This action set forth in the Amended Complaint seeks to remedy the continuing
failure of Defendants EARTHLY TREATS, INC. (D/B/A/ REAL FOOD FROM THE GROUND
UP); and DOES 1-10. (hereinafter individually referred to as "DEFENDANT" or collectively as
"DEFENDANTS") to warn consumers in California that they are being exposed to acrylamide, a
chemical known to the State of California to cause cancer, birth defects and other reproductive harm.

1 According to the Safe Drinking Water and Toxics Enforcement Act of 1986, Health and Safety
2 Code ("H&S Code") section 25249.5 (also known as and referred to hereinafter as "Proposition
3 65"), businesses must provide persons with a "clear and reasonable warning" before exposing
4 individuals to chemicals known to the state to cause cancer or reproductive harm.

5 2. DEFENDANTS manufacture, package, distribute, market, and / or sell in California
6 certain consumer products, as defined in Cal. Code Regs., tit. 27, § 25600.1, subd. (d) and (e),
7 containing acrylamide, referred to herein as ("the SUBJECT PRODUCTS"):

- 8 • Earthly Treats Cauliflower Starrs Sea Salt –Acrylamide
- 9 • Earthly Treats Cauliflower Crackers Sea Salt –Acrylamide
- 10 • Earthly Treats Cauliflower Crackers Cheddar Flavor –Acrylamide
- 11 • Earthly Treats Cauliflower Crackers Nacho Flavor –Acrylamide

12 3. Acrylamide, (hereinafter the "LISTED CHEMICALS") are known to the State of
13 California to cause cancer, birth defects and other reproductive harm.

14 4. Consumption of the SUBJECT PRODUCTS causes exposure to the LISTED
15 CHEMICALS at levels requiring a "clear and reasonable warning" under Proposition 65.

16 5. DEFENDANTS' continued manufacturing, packaging, distributing, marketing and /
17 or sales of the SUBJECT PRODUCTS without the required health hazard warnings, causes or
18 threatens to cause, individuals to be involuntarily, unknowingly and unwittingly exposed to levels
19 of the LISTED CHEMICALS that violate Proposition 65.

20 **PARTIES**

21 6. PLAINTIFF CRC is a non-profit corporation organized under California law
22 dedicated to protecting the public from environmental health hazards and toxic exposures. CRC is

1 based in Newport Beach, CA. CRC is a person within the meaning of H&S Code §25249.11 and
2 brings this enforcement action in the public interest pursuant to H&S Code §25249.7(d). H&S Code
3 § 25249.7 (d) specifies that actions to enforce Proposition 65 may be brought by a person in the
4 public interest, provided certain notice requirements and no other public prosecutor is diligently
5 prosecuting an action for the same violation(s). CRC is dedicated to, among other causes, reducing
6 the use and misuse of hazardous and toxic substances, consumer protection, worker safety, and
7 corporate responsibility.

8
9 7. Defendant EARTHLY TREATS, INC. (D/B/A/ REAL FOOD FROM THE
10 GROUND UP) is now and was at all times relevant herein a corporation organized under the laws
11 of Delaware and is a person in the course of doing business within the meaning of H&S Code
12 §25249.11.

13 8. DEFENDANTS own, administer, direct, control and /or operate facilities and /or
14 agents, distributors, sellers, marketers, or other retail operations who place their SUBJECT
15 PRODUCTS into the stream of commerce in California, (including but not limited to Orange
16 County) under the brand name Earthly Treats and other brand names, which contain the LISTED
17 CHEMICALS without first giving clear and reasonable warnings.

18
19 9. DEFENDANTS separately and each of them, are or were, at all times relevant to the
20 claims in this Complaint and continuing through the present, legally responsible for compliance
21 with the provisions of Proposition 65. Whenever an allegation regarding any act or omission of a
22 DEFENDANT is made herein, such allegation shall be deemed to mean that DEFENDANT, or its
23 agent, officer, director, manager, supervisor, or employee did, or so authorized, or failed to do, such
24 acts while engaged in the affairs of DEFENDANT'S business operations and/or while acting within
25

1 the course and scope of their employment or while conducting business for DEFENDANT(S) for a
2 commercial purpose.

3 10. In this Amended Complaint, whenever reference is made to any act or omission of
4 any DEFENDANT, such allegation shall mean that the owners, officers, directors, agents,
5 employees, contractors, or representatives of DEFENDANT acted or authorized such actions, and/or
6 negligently failed and omitted to act or adequately and properly supervise, control, or direct its
7 employees and agents while engaged in the management, direction, operation or control of the
8 affairs of the business organization. Whenever reference is made to any act or omission of any
9 DEFENDANT, such allegation shall be deemed to mean the act or omission of each DEFENDANT
10 acting individually, jointly, and severally as defined by Civil Code Section 1430 *et seq.*

12 11. PLAINTIFF does not know the true names, capacities and liabilities of
13 DEFENDANTS DOES Nos. 1-10, inclusive, and therefore sues them under fictitious names.
14 Plaintiff will amend this Complaint to allege the true name and capacities of the DOE Defendants
15 upon being ascertained. Each of these DEFENDANTS was in some way legally responsible for the
16 acts, omissions, and/or violations alleged herein.

18 **JURISDICTION AND VENUE**

19 12. This Court has jurisdiction over this action pursuant to California Constitution
20 Article VI, Section 10, which grants the Superior Court “original jurisdiction in all causes except
21 those given by statute to other trial courts.” The statute under which this action is brought does not
22 specify any other court with jurisdiction.

24 13. This Court has jurisdiction over DEFENDANTS because they are business entities
25 that do sufficient business, have sufficient minimum contacts in California or otherwise
26 intentionally avail themselves of the California market, through the sale, marketing and use of their

1 SUBJECT PRODUCTS in California, to render the exercise of jurisdiction over them by the
2 California courts consistent with traditional notions of fair play and substantial justice.

3 14. Venue in this action is proper in the Orange County Superior Court because the
4 cause, or part thereof, arises in the Orange County Superior Court since DEFENDANTS' products
5 are marketed, offered for sale, sold, used, and/or consumed in this county.

6 **STATUTORY BACKGROUND**
7

8 15. The People of the State of California have declared by initiative under Proposition
9 65 their right "[t]o be informed about exposures to chemicals that cause cancer, birth defects, or
10 other reproductive harm." Proposition 65, § 1(b).

11 16. To effectuate this goal, Proposition 65 prohibits exposing people to chemicals
12 listed by the State of California as known to cause cancer, birth defects, or other reproductive
13 harm above certain levels without a "clear and reasonable warning" unless the business
14 responsible for the exposure can prove that it fits within a statutory exemption. California's Safe
15 Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code, section
16 25249.6 et seq. states in pertinent part:
17

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

21 17. An exposure to a chemical in a consumer product is one "that results from a person's
22 acquisition, purchase, storage, consumption, or any reasonably foreseeable use of a consumer
23 product, including consumption of food." (Cal Code Regs., tit 27, §25600.1, subd. (e).) A
24 "consumer product" includes "any article, or component part thereof, including food, that is
25

1 produced, distributed, or sold for the personal use, consumption or enjoyment of a consumer.” (Cal
2 Code Regs., tit 27, §25600.1, subd. (d).)

3 18. Proposition 65 provides that any person who “violates or threatens to violate”
4 the statute may be enjoined in any court of competent jurisdiction. Health & Safety Code §
5 25249.7. “Threaten to violate” is defined to mean “to create a condition in which there is a
6 substantial probability that a violation will occur.” Health & Safety Code § 25249.11(e).
7 Proposition 65 provides for civil penalties not to exceed \$2,500 per day for each violation of
8 Proposition 65.
9

10 **FACTUAL BACKGROUND**

11 19. On February 25, 2011, the State of California officially listed acrylamide as a
12 chemical known to cause developmental toxicity, and male and female reproductive toxicity. On
13 January 1, 1990, the State of California officially listed acrylamide as a chemical known to cause
14 cancer. On January 1, 1991, one year after it was listed as a chemical known to cause cancer,
15 acrylamide became subject to the clear and reasonable warning requirement regarding carcinogens
16 under Proposition 65. 27 California Code of Regulations (“C.C.R.”) § 27001(b); Health & Safety
17 Code § 25249.10(b). Due to the high toxicity of acrylamide, the maximum allowable dose level
18 for acrylamide is 140 µg/day (micrograms a day) for reproductive toxicity and the no significant
19 risk level for carcinogens is .2 µg/day.
20

21 20. To test DEFENDANTS’ SUBJECT PRODUCTS for the LISTED CHEMICALS,
22 PLAINTIFF hired a well-respected and accredited testing laboratory. The results of testing
23 undertaken by PLAINTIFF of DEFENDANTS’ SUBJECT PRODUCTS show that the SUBJECT
24 PRODUCTS tested were in violation of “safe harbor” daily dose limits set forth for the LISTED
25 CHEMICALS in Proposition 65’s regulations.
26

21. At all times relevant to this action, DEFENDANTS, therefore, have knowingly and intentionally exposed the consumers of the SUBJECT PRODUCTS to the LISTED CHEMICALS without first giving a clear and reasonable warning to such individuals.

22. The SUBJECT PRODUCTS have allegedly been sold by DEFENDANTS for use in California. On information and belief, Earthly Treats Cauliflower Starrs Sea Salt have been sold for use in California since September 4, 2017. Earthly Treats Cauliflower Crackers Sea Salt, Earthly Treats Cauliflower Crackers Nacho Flavor and Earthly Treats Cauliflower Crackers Cheddar Flavor have been sold for use in California since October 23, 2017

23. . The SUBJECT PRODUCTS continue to be distributed and sold in California without the requisite warning information.

24. As a proximate result of acts by DEFENDANTS, as persons in the course of doing business within the meaning of Health & Safety Code §25249.11, individuals throughout the State of California, including in Orange County have been exposed to the LISTED CHEMICALS without a clear and reasonable warning on the SUBJECT PRODUCTS. The individuals subject to the violative exposures include normal and foreseeable users of the SUBJECT PRODUCTS, as well as all other persons exposed to the SUBJECT PRODUCTS.

SATISFACTION OF PRIOR NOTICE

25. On September 4, 2020 and October 23, 2020, CRC served DEFENDANTS and each of the appropriate public enforcement agencies with documents entitled “Notice of Violations of California Health & Safety Code Section 25249.5” that provided EARTHLY TREATS, INC. and the public enforcement agencies with notice that EARTHLY TREATS, INC. was in violation of Proposition 65 for failing to warn purchasers and individuals using the SUBJECT PRODUCTS that the consumption of these products expose them to acrylamide, a chemical known to the State of

1 California to cause cancer and/or reproductive toxicity (“Prop. 65 Notices”). True and correct copies
2 of the 60-Day Notices (“NOTICES”) are attached hereto as **Exhibit “A”** (09/04/2020 Notice) and
3 **“B”** (10/23/20 Notice) and each hereby is incorporated by reference. The NOTICES are also
4 available on the Attorney General’s website located at <http://oag.ca.gov/prop65>.

5 26. The NOTICES were issued pursuant to, and in compliance with, the requirements of
6 H&S Code §25249.7(d) and the statute’s implementing regulations regarding the notice of the
7 violations to be given to certain public enforcement agencies and to the violator. The NOTICES
8 included, *inter alia*, the following information: the name, address, and telephone number of the
9 noticing individual; the name of the alleged violator(s); the statute violated; the approximate time
10 period during which violations occurred; and descriptions of the violations including the chemicals
11 involved, the routes of toxic exposure, and the specific product or type of product causing the
12 violations.
13

14 27. EARTHLY TREATS, INC. was also provided copies of the document with the
15 NOTICES entitled “The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65):
16 A Summary,” which is also known as Appendix A to Title 27 of CCR §25903, via Certified Mail.
17

18 28. The California Attorney General, District Attorneys of every county in California, to
19 the City Attorneys of every California city with a population greater than 750,000, and each of the
20 named DEFENDANTS was provided copies of the NOTICES and a Certificate of Merit by the
21 attorney for the noticing party, stating that there is a reasonable and meritorious case for this action
22 and attaching factual information sufficient to establish a basis for the certificate, including the
23 identity of the persons consulted with and relied on by the certifier, and the facts, studies, or other
24 data reviewed by those persons, pursuant to H&S Code §25249.7(h) (2) via online submission.
25

1 29. After expiration of the sixty (60) day notice period, the appropriate public
2 enforcement agencies failed to commence and diligently prosecute a cause of action under H&S
3 Code §25249.5, et seq. against DEFENDANTS based on the allegations herein.

4 30. After expiration of the sixty (60) day notice period, the appropriate public
5 enforcement agencies failed to commence and diligently prosecute a cause of action under H&S
6 Code §25249.5, et seq. against DEFENDANTS based on the allegations herein.

7
8 **FIRST CAUSE OF ACTION**

9 **Civil Penalties for Violations of Health and Safety Code § 25249.5, *et seq.* concerning the**
10 **SUBJECT PRODUCTS described in the September 4, 2020, and October 23, 2020**
11 **Prop. 65 Notices of Violation against DEFENDANTS**

12 31. PLAINTIFF refers to, and incorporates by reference, the allegations of all preceding
13 Paragraphs this Complaint, as though fully set forth herein.

14 32. By committing the acts alleged in this Complaint, DEFENDANTS at all times
15 relevant to this action, and continuing through the present, have violated, or threaten to violate, H&S
16 Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing
17 individuals in California to chemicals known to the State of California to cause cancer or
18 reproductive toxicity without first giving clear and reasonable warnings to such persons who
19 consume the SUBJECT PRODUCTS containing the LISTED CHEMICALS, pursuant to H&S Code
20 §§ 25249.6 and 25249.11(f).

21 33. By the above-described acts, DEFENDANTS are liable, pursuant to H&S Code
22 §25249.7(b), for a civil penalty of up to \$2,500 per day per violation for each unlawful exposure to
23 the LISTED CHEMICALS from the SUBJECT PRODUCTS.
24

25 ///

THE NEED FOR INJUNCTIVE RELIEF
(Injunctive Relief for Violations of Health and Safety Code § 25249.5, *et seq.* concerning the
SUBJECT PRODUCTS described in the September 4, 2020, and October 23, 2020
Prop. 65 Notices of Violation) against DEFENDANTS

34. PLAINTIFF refers to, and incorporates by reference, the allegations of all preceding Paragraphs this Complaint, as though fully set forth herein.

35. By committing the acts alleged in this Complaint, DEFENDANTS at all times relevant to this action, and continuing through the present, have violated, or threaten to violate, H&S Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing individuals in California to chemicals known to the State of California to cause cancer or reproductive toxicity without first giving clear and reasonable warnings to such persons who consume the SUBJECT PRODUCTS containing the LISTED CHEMICALS, pursuant to H&S Code §§ 25249.6 and 25249.11(f).

36. By the above-described acts, DEFENDANTS have violated, or threaten to violate, H&S Code §25249.6 and are therefore subject to preliminary and permanent injunctions ordering Defendants to stop violating Proposition 65, to provide warnings to all present and future customers, and to provide warnings to DEFENDANTS' past customers who purchased or used the SUBJECT PRODUCTS without receiving a clear and reasonable warning.

37. An action for injunctive relief under Proposition 65 is specifically authorized by H&S Code §25249.7(a).

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

39. In the absence of preliminary and then permanent injunctive relief, DEFENDANTS will continue to create a substantial risk of irreparable injury by continuing to cause consumers to

1 be involuntarily, unknowingly, and unwittingly exposed to the LISTED CHEMICALS through the
2 consumption of the SUBJECT PRODUCTS.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS, and each of them,
5 and DOES 1 through 10, as follows:

6 1. A preliminary and permanent injunction, pursuant to H&S Code §25249.7(b),
7 enjoining DEFENDANTS, their agents, employees, assigns and all persons acting in concert or
8 participating with DEFENDANTS, from manufacturing, distributing, marketing or selling the
9 SUBJECT PRODUCTS in California without first providing a clear and reasonable warning, within
10 the meaning of Proposition 65, that the consumers of the SUBJECT PRODUCTS are exposed to the
11 LISTED CHEMICALS;

12 2. An injunctive order, pursuant to H&S Code §25249.7(b), compelling
13 DEFENDANTS, to identify and locate each individual who has purchased the SUBJECT
14 PRODUCTS since the dates identified in Paragraph 23 and to provide a warning to such person that
15 the consumption of the SUBJECT PRODUCTS will expose the consumer to chemicals known to
16 cause cancer, birth defects and other reproductive harm;

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

19 4. An award to PLAINTIFF of its reasonable attorney's fees and costs of suit pursuant
20 to California Code of Civil Procedure §§ 1032 *et. seq* and 1021.5, as PLAINTIFF shall specify in
21 further applications to the Court; and,

22 5. For such other and further relief as the Court may deem just and proper.

23 ///

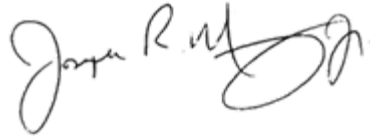
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25 ///

26 ///

1 Dated this 29th day of June, 2021

2 **MANNING LAW, A.P.C**

3 

4 By: _____

5 Joseph R. Manning, Jr., Esq.
6 Babak Hashemi, Esq.
7 Attorneys for Plaintiff

EXHIBIT A



MANNING LAW_{APC}

20062 SW Birch St., Suite 200
Newport Beach, CA 92660
Office: 949.200.8755
Facsimile: 866.843.8308
P65@manninglawoffice.com

CONSUMER ATTORNEYS

September 4, 2020

NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 *ET SEQ.* (PROPOSITION 65)

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I represent CalSafe Research Center, Inc. ("CRC"), 4533 MacArthur Blvd., Ste. 230, Newport Beach, CA 92660; Tel. (949) 630-0413. CRC's Executive Director is Eric Fairon. CRC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

CRC 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 Health and Safety Code Section 25249.7(d), CRC intends to pursue a private enforcement action in the public interest 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 enclosed with this letter served to the alleged Violators identified below.

Alleged Violators. The names of the person/company covered by this notice that violated Proposition 65 (hereinafter the "Violators") are:

Earthly Treats, Inc
100 Passive Avenue
Suite 100
Fairfield, NJ 07004-3563



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Newport Beach, CA 92660
Office: 949.200.8755
Facsimile: 866.843.8308
P65@manninglawoffice.com

CONSUMER ATTORNEYS

Grocery Outlet
5650 Hollis Street
Emeryville, CA 94608

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:

Earthly Treats Inc., Cauliflower Stars Sea Salt

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.

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

It should be noted that CRC 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 June 24, 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.



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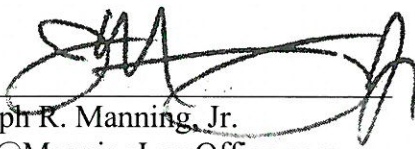
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CONSUMER ATTORNEYS

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, CRC 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.

CRC 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 on the letterhead or at P65@ManningLawOffice.com.**

Sincerely,



Joseph R. Manning, Jr.
P65@ManningLawOffice.com

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Alleged Violators only)
- Factual Information in Support of Certificate of Merit (to AG only)



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CONSUMER ATTORNEYS


CERTIFICATE OF MERIT

Re: CalSafe Research Center, Inc.'s Notice of Proposition 65 Violations by Earthly Treats, Inc and Grocery Outlet.

I, Joseph R. Manning, Jr., declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
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 consultations, 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: September 4, 2020



Joseph R. Manning, Jr.
P65@ManningLawOffice.com



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CONSUMER ATTORNEYS

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 20062 S.W. Birch, Newport Beach, CA 92660. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Newport Beach, California.

On September 4, 2020 between 8:00 a.m. and 5:00 p.m. Pacific Standard Time, I served the following documents: **NOTICE OF VIOLATION 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Leigh Feuerdtein, CEO
Earthly Treats, Inc
100 Passive Avenue
Suite 100
Fairfield, NJ 07004-3563

Eric Lindberg, CEO
Grocery Outlet
5650 Hollis Street
Emeryville, CA 94608

On September 4, 2020 between 8:00 a.m. and 5:00 p.m. Pacific Standard 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>:



MANNING LAW_{APC}

20062 SW Birch St., Suite 200
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P65@manninglawoffice.com

CONSUMER ATTORNEYS

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

On September 4, 2020 between 8:00 a.m. and 5:00 p.m. Pacific Standard Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Nancy O'Malley, District Attorney Alameda County 7677 Oakport Street, Suite 650 Oakland, CA 94621 CEPDProp65@acgov.org	Barbara Yook, District Attorney Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249 Prop65Env@co.calaveras.ca.us
Stacey Grassini, Deputy District Attorney Contra Costa County 900 Ward Street Martinez, CA 94553 sgrassini@contracostada.org	Thomas L. Hardy, District Attorney Inyo County 168 North Edwards Street Independence, CA 93526 inyoda@inyocounty.us
Michelle Latimer, Program Coordinator Lassen County 220 S. Lassen Street Susanville, CA 96130 mlatimer@co.lassen.ca.us	Dije Ndreu, Deputy District Attorney Monterey County 1200 Aguajito Road Monterey, CA 93940 Prop65DA@co.monterey.ca.us
Allison Haley, District Attorney Napa County 1127 First Street, Suite C Napa, CA 94559 CEPD@countyofnapa.org	Michael Hestrin, District Attorney Riverside County 3072 Orange Street Riverside, CA 92501 Prop65@rivcoda.org
Anne Marie Schubert, District Attorney Sacramento County 901 G Street Sacramento, CA 95814 Prop65@sacda.org	Mark Ankorn, Deputy City Attorney San Diego City Attorney 1200 Third Avenue San Diego, CA 92101 CityAttyProp65@sandiego.gov
Gregory Alker, Assistant District Attorney	Valerie Lopez, Deputy City Attorney



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CONSUMER ATTORNEYS

San Francisco County 732 Brannan Street San Francisco, CA 94103 gregory.alker@sfgov.org	San Francisco City Attorney 1390 Market Street, 7 th Floor San Francisco, CA 94102 Valerie.Lopez@sfcityatty.org
Tori Verber Salazar, District Attorney San Joaquin County 222 E. Weber Avenue, Room 202 Stockton, CA 95202 DAConsumer.Environmental@sjcda.org	Eric J. Dobroth, Deputy District Attorney San Luis Obispo County County Government Center Annex, 4 th Floor San Luis Obispo, CA 93408 edobroth@co.slo.ca.us
Christopher Dalbey, Deputy District Attorney Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101 DAProp65@co.santa-barbara.ca.us	Bud Porter, Supervising Deputy District Attorney Santa Clara County 70 W Hedding St San Jose, CA 95110 EPU@da.sccgov.org
Stephan R. Passalacqua, District Attorney Sonoma County 600 Administration Dr Sonoma, CA 95403 jbarnes@sonoma-county.org	Phillip J. Cline, District Attorney Tulare County 221 S Mooney Blvd Visalia, CA 95370 Prop65@co.tulare.ca.us
Gregory D. Totten, District Attorney Ventura County 800 S Victoria Ave Ventura, CA 93009 daspecialops@ventura.org	Jeff W. Reisig, District Attorney Yolo County 301 Second Street Woodland, CA 95695 cfepd@yolocounty.org

On September 4, 2020 between 8:00 a.m. and 5:00 p.m. Pacific Standard Time, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on September 4, 2020, in Newport Beach, California.



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Diana Lopez

Service List

District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101
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District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901



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District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	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
District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012		

EXHIBIT B



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CONSUMER ATTORNEYS

October 23, 2020

NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 *ET SEQ.* (PROPOSITION 65)

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I represent CalSafe Research Center, Inc. ("CRC"), 4533 MacArthur Blvd., Ste. 230, Newport Beach, CA 92660; Tel. (949) 630-0413. CRC's Executive Director is Eric Fairon. CRC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

CRC 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 Health and Safety Code Section 25249.7(d), CRC intends to pursue a private enforcement action in the public interest 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 enclosed with this letter served to the alleged Violators identified below.

Alleged Violators. The names of the person/company covered by this notice that violated Proposition 65 (hereinafter the "Violators") are:

Earthly Treats, Inc
100 Passive Avenue
Suite 100



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Newport Beach, CA 92660
Office: 949.200.8755
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CONSUMER ATTORNEYS

Fairfield, NJ 07004-3563

Bristol Farms

915 E 230th Street

Carson, CA 90745

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:

Earthly Treats Cauliflower Crackers Sea Salt
Earthly Treats Crackers Cauliflower Cheddar Flavor
Earthly Treats Crackers Cauliflower Nacho Flavor

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

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 CRC 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 August 28, 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



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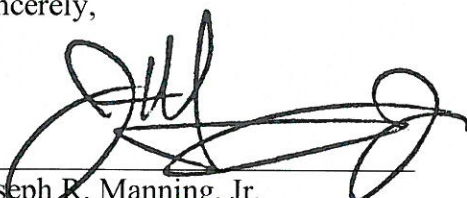
CONSUMER ATTORNEYS

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, CRC 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.

CRC 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 on the letterhead or at P65@ManningLawOffice.com.**

Sincerely,



Joseph R. Manning, Jr.
P65@ManningLawOffice.com

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Alleged Violators only)
- Factual Information in Support of Certificate of Merit (to AG only)



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CONSUMER ATTORNEYS

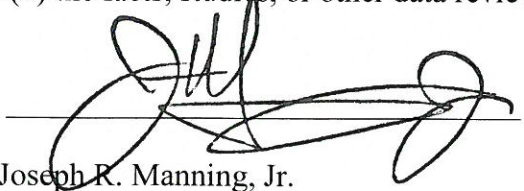
CERTIFICATE OF MERIT

Re: Calsafe Research Center, Inc.'s Notice of Proposition 65 Violations by Earthly Treats and Bristol Farms.

I, Joseph R. Manning, Jr., declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
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 consultations, 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: October 23, 2020


Joseph R. Manning, Jr.
P65@ManningLawOffice.com



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CONSUMER ATTORNEYS

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 20062 S.W. Birch, Newport Beach, CA 92660. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Newport Beach, California.

On October 23, 2020 between 8:00 a.m. and 5:00 p.m. Pacific Standard Time, I served the following documents: **NOTICE OF VIOLATION 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Leigh Feuerdtein, CEO
Earthly Treats, INC
100 Passive Avenue
Suite 100
Fairfield, NJ 07004-3563

Adam Caldecott, CEO
Bristol Farms
915 E 230th Street
Carson CA 90745

On October 23, 2020 between 8:00 a.m. and 5:00 p.m. Pacific Standard 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



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CONSUMER ATTORNEYS

following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice>:

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

On October 23, 2020 between 8:00 a.m. and 5:00 p.m. Pacific Standard Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Nancy O' Malley, District Attorney Alameda County 7677 Oakport Street, Suite 650 Oakland, CA 94621 CEPDProp65@acgov.org	Barbara Yook, District Attorney Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249 Prop65Env@co.calaveras.ca.us
Stacey Grassini, Deputy District Attorney Contra Costa County 900 Ward Street Martinez, CA 94553 sgrassini@contracostada.org	Thomas L. Hardy, District Attorney Inyo County 168 North Edwards Street Independence, CA 93526 inyoda@inyocounty.us
Michelle Latimer, Program Coordinator Lassen County 220 S. Lassen Street Susanville, CA 96130 mlatimer@co.lassen.ca.us	Dije Ndreu, Deputy District Attorney Monterey County 1200 Aguajito Road Monterey, CA 93940 Prop65DA@co.monterey.ca.us
Allison Haley, District Attorney Napa County 1127 First Street, Suite C Napa, CA 94559 CEPD@countyofnapa.org	Michael Hestrin, District Attorney Riverside County 3072 Orange Street Riverside, CA 92501 Prop65@rivcoda.org
Anne Marie Schubert, District Attorney Sacramento County 901 G Street	Mark Ankorn, Deputy City Attorney San Diego City Attorney 1200 Third Avenue



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Sacramento, CA 95814 Prop65@sacda.org	San Diego, CA 92101 CityAttyProp65@sandiego.gov
Gregory Alker, Assistant District Attorney San Francisco County 732 Brannan Street San Francisco, CA 94103 gregory.alker@sfgov.org	Valerie Lopez, Deputy City Attorney San Francisco City Attorney 1390 Market Street, 7 th Floor San Francisco, CA 94102 Valerie.Lopez@sfcityatty.org
Tori Verber Salazar, District Attorney San Joaquin County 222 E. Weber Avenue, Room 202 Stockton, CA 95202 DAConsumer.Environmental@sjcda.org	Eric J. Dobroth, Deputy District Attorney San Luis Obispo County County Government Center Annex, 4 th Floor San Luis Obispo, CA 93408 edobroth@co.slo.ca.us
Christopher Dalbey, Deputy District Attorney Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101 DAProp65@co.santa-barbara.ca.us	Bud Porter, Supervising Deputy District Attorney Santa Clara County 70 W Hedding St San Jose, CA 95110 EPU@da.sccgov.org
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Executed on October 23, 2020, in Newport Beach, California.



Diana Lopez

Service List

District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101
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On 6/29/21, I served the true copies of the foregoing document described as

on the interested parties in this action, addressed as follows:

Attorney for Defendants

[X] BY United States Postal Service via Certified mail, with return receipt requested. The documents were mailed as set forth above by U.S. Mail via Certified mail and placed in sealed, addressed envelopes on the above date and deposited into a U.S. Postal Service Mailbox on the date set forth above, with postage thereon fully prepaid at Newport Beach, California prior to the time for collection on that day.

Linda Sanchez

Linda Sanchez