

ROSS, DIXON & BELL, LLP

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

December 6, 2005

Bill Stadtlander
President
Homestat Farm, Ltd
6065 Frantz Rd., Suite 206
Dublin, OH 43017

AND THE PUBLIC PROSECUTORS LISTED ON THE ATTACHED CERTIFICATE OF SERVICE

Re: Consumer Product Exposure to Acrylamide

To Whom It May Concern:

This letter constitutes notice that Homestat Farm, Ltd. (“Homestat”) has violated and continues to violate provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code §§ 25249.5 *et seq.* (“Proposition 65”). Specifically, this entity has violated and continues to violate the warning requirement of § 25249.6 of the California Health and Safety Code, which provides, “[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual...” This notice satisfies a prerequisite for Robert Wilkinson to commence an action against Homestat in any Superior Court of California to enforce Proposition 65. The violations addressed by this notice have occurred in every county in California. Robert Wilkinson is serving this notice upon each person or entity responsible for the alleged violations, the California Attorney General, the district attorney for every county where the alleged violations occurred, and the City Attorney for every city with a population (according to the most recent decennial census) of over 750,000 located within counties where the alleged violations occurred.

By serving this notice, Robert Wilkinson is acting “in the public interest” pursuant to Proposition 65. Homestat may contact Robert Wilkinson, 3169 Old Bridgeport Way, San Diego, CA 92111, telephone number (619) 787-3409 through his attorneys, Jason Hartley, Esq., 550 West B St., Suite 400, San Diego, CA 92101, telephone number (619) 557-4331, and additional undersigned counsel.

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Mr. Bill Stadtlander
December 6, 2005

Attached to this notice is a copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary." This summary provides general information about Proposition 65.

For at least the past 20 years, and continuing to the present, Homestat and/or its predecessor entity or entities have caused consumer product exposure to the carcinogen acrylamide. Acrylamide has been listed by the Governor of the State of California as a chemical known to the State of California to cause cancer or reproductive toxicity and has been so listed for more than twelve months. Specifically, Homestat sells Wheatena brand cereal, which contains acrylamide, to retailers and consumers throughout California. The principal route of exposure to acrylamide is through ingestion of the product after mixing the product with water or other liquids. There may also be a risk of dermal exposure or exposure through inhalation while preparing the product for consumption. The location of the alleged exposures are varied, occurring within the 58 counties of the state of California

Accordingly, Homestat, which has ten or more employees, has knowingly and intentionally exposed, and continues to expose, California consumers to concentrations of acrylamide that exceed safe harbor levels without first providing clear and reasonable warnings as required by Proposition 65. Homestat was and is required to provide clear and reasonable warnings to all consumers of Wheatena brand cereal stating that Wheatena contains chemicals known to the State of California to cause cancer.

Pursuant to Health and Safety Code §25249.7(d)(1), the undersigned counsel hereby include the attached Certificate of Merit, which states that the undersigned counsel have consulted with one or more persons with relevant and appropriate experience or expertise who has or have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of this notice, and that, based on that information, the undersigned counsel believe there is a reasonable and meritorious case. Factual information sufficient to establish the basis of this Certificate of Merit is included with the notice that is served on the Attorney General and is provided to that office in confidence and is not to be disclosed except according to law.

Through this notice, Robert Wilkinson provides Homestat and the appropriate government authorities notice of his intent to sue 60 days prior to the commencement of an action. In the absence of any action by the appropriate governmental authorities within 60 days of the sending of this notice, Robert Wilkinson may file suit.

Mr. Bill Stadtlander
December 6, 2005

Sincerely,



Jason S. Hartley
ROSS, DIXON & BELL, LLP
550 West B Street, Suite 400
San Diego, CA 92101
Tel: (619) 235-4040

Howard Rubinstein
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Beaumont, TX 77704
Tel: (409) 832-1891

cc:

Attachments

Mr. Bill Stadtlander
December 6, 2005

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Howard Rubinstein hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the party(s) identified in the notice(s) has violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party.
3. I have consulted with at least one person with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the subject of the action.
4. Based on the information obtained through those consultations, and on all 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 plaintiffs' case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 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: December 6, 2005

By: 
Howard Rubinstein

Mr. Bill Stadtlander
December 6, 2005

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action; my business address is 550 West B Street, Suite 400, San Diego, CA 92101. On December 6, 2005, I served a copy of the following documents described as follows:

- **NOTICE OF VIOLATION OF THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 DATED 11/23/05 TO See Attached Distribution List FROM Jason Hartley, Esq.**
- **THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY (only sent to alleged violators)**
- **CERTIFICATE OF MERIT – (attachments only sent to California Attorney General's Office)**

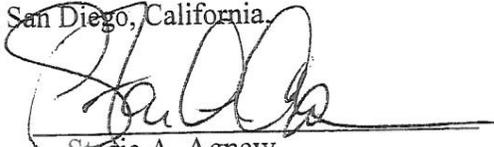
_____ BY FACSIMILE TRANSMISSION (C.R.C. Rule 2008): At the time of transmission I was at least 18 years of age and not a party to this legal proceeding. I am "readily familiar" with the firm's practice of sending and receiving facsimile documents for service of process. Under that practice, the document(s) were caused to be sent to the parties via facsimile machine.

 X VIA U.S. MAIL (C.C.P. §1013a(1) and (3)): I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing with the United States Postal Service; and that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business. A true and correct copy thereof was enclosed in sealed envelope(s) and addressed as follows.

_____ BY OVERNIGHT DELIVERY MAIL (C.C.P. §1013(c)): I am readily familiar with the practice of this firm for collection and processing of correspondence for mailing by FedEx. Pursuant to this practice, correspondence would be deposited in the a FedEx pickup location in San Diego, California in the ordinary course of business on the date of this declaration. A true and correct copy thereof was enclosed in sealed envelope(s) and addressed as follows.

SEE ATTACHED DISTRIBUTION LIST

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on December 6, 2005, at San Diego, California.


Stacie A. Agnew

Mr. Bill Stadtlander
December 6, 2005

DISTRIBUTION LIST

The Honorable Thomas Orloff District Attorney ALAMEDA COUNTY 1225 Fallon Street, Room 900 Oakland, CA 94612	The Hon. William Richmond District Attorney ALPINE COUNTY P.O. Box 248 Markleeville, CA 96120	The Honorable Todd Riebe District Attorney AMADOR COUNTY 708 Court Street, #202 Jackson, CA 95642
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Mr. Bill Stadtlander
 December 6, 2005

The Honorable Robert Brown District Attorney MARIPOSA COUNTY P.O. BOX 730 Mariposa, CA 95338	The Hon. Norman Vroman District Attorney MENDOCINO COUNTY P.O. Box 1000 Ukiah, CA 95482	The Honorable Gordon Spencer District Attorney MERCED COUNTY 2222 M Street Merced, CA 95340
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The Honorable Bonnie Dumanis District Attorney SAN DIEGO COUNTY 330 W. Broadway, STE. 1320 San Diego, CA 92101	The Hon. Kamal Harris District Attorney SAN FRANCISCO COUNTY 880 Bryant Street, Room 325 San Francisco, CA 94103	The Honorable James Willett District Attorney SAN JOAQUIN COUNTY P.O. BOX 990 Stockton, CA 95201
The Honorable Gerald She District Attorney SAN LUIS OBISPO COUNTY County Govt. Center, 4 th FL Annex San Luis Obispo, CA 93408	The Hon. James Fox District Attorney SAN MATEO COUNTY 400 County Center, 3 rd Floor Redwood City, CA 94063	The Hon. Thomas Sneddon, Jr. District Attorney SANTA BARBARA COUNTY 1105 Santa Barbara Street Santa Barbara, CA 93101

Mr. Bill Stadtlander
December 6, 2005

<p>The Honorable George Kennedy District Attorney SANTA CLARA COUNTY West Hedding Street, West Wing San Jose, CA 95110</p>	<p>The Hon. Bob Lee District Attorney SANTA CRUZ COUNTY 701 Ocean Street, Room 200 Santa Cruz, CA 95060</p>	<p>The Honorable Gerald Benito District Attorney SHASTA COUNTY 1525 Court Street, Third Floor Redding, CA 96001-1632</p>
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<p>The Honorable Stephan Passalecqua District Attorney SONOMA COUNTY 600 Administration Drive Room 2121 Santa Rosa, CA 95403</p>	<p>The Hon. James Brazelton District Attorney STANISLAUS COUNTY 800 11th Street, Room 200 P.O. Box 442 Modesto, CA 95353</p>	<p>The Honorable Carl Adams District Attorney SUTTER COUNTY 446 Second Street Yuba City, CA 95991</p>
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<p>The Hon. Donald Segerstrom, Jr. District Attorney TUOLUMNE COUNTY 423 No. Washington Street Sonora, CA 95370</p>	<p>The Hon. Gregory Totten District Attorney VENTURA COUNTY 800 South Victoria Avenue Ventura, CA 93009</p>	<p>The Honorable David Henderson District Attorney YOLO COUNTY 301 Second Street Woodland, CA 95695</p>
<p>The Honorable Patrick McGrath District Attorney YUBA COUNTY 215 Fifth Street Marysville, CA 95901</p>	<p>The Hon. Rockard Delgadillo City Attorney CITY OF LOS ANGELES 200 N. Main Street Los Angeles, CA 90012</p>	<p>The Honorable Michael Aquirre City Attorney CITY OF SAN DIEGO 1200 Third Avenue, 3rd Floor San Diego, CA 92101</p>
<p>The Honorable Dennis Herrera City Attorney CITY OF SAN FRANCISCO City Hall, Room 234 San Francisco, CA 94102</p>	<p>The Hon. Richard Doyle City Attorney CITY OF SAN JOSE 151 W. Mission St. San Jose, CA 95110</p>	<p>Attorney General of California Prop. 65 Enforcement Reporting Attention: Prop. 65 Coordinator 1515 Clay Street, Suite 2000 P.O. Box 70550 Oakland, CA 94612-0550</p>

Mr. Bill Stadtlander
December 6, 2005

Bill Stadtlander President Homestat Farm, Ltd 6065 Frantz Rd., Suite 206 Dublin, OH 43017	
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