

**60-DAY NOTICE OF VIOLATION**  
SENT IN COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)

**MARCH 24, 2008**

**TO:** Albert Sarchar, President – Barney’s Gourmet Hamburger  
Albert Sarchar, President – Barney’s San Francisco, Inc.  
California Attorney General’s Office;  
District Attorney’s Office for 58 Counties;  
City Attorneys for San Francisco, San Diego, San Jose, Sacramento and Los Angeles;

**FROM:** Dr. Whitney R. Leeman

**I. INTRODUCTION**

My name is Whitney R. Leeman. I hold a Doctor of Philosophy degree in Environmental Engineering. I am a citizen of the State of California acting in the interest of the general public. I seek to promote awareness of exposures to toxic chemicals in products sold in California and, if possible, to improve human health by reducing hazardous substances contained in such items. This Notice is provided to the parties listed above pursuant to California Health & Safety Code §25249.6 *et seq.* (“Proposition 65”). As noted above, notice is being provided to the violators, Barney’s Gourmet Hamburger and Barney’s San Francisco, Inc. (the “Violators”). The violations covered by this Notice consist of the product exposures, routes of exposures, and types of harm potentially resulting from exposure(s) to the following toxic chemicals (“listed chemicals”):

<i>Listed Chemicals</i>	<i>Routes of Exposure</i>	<i>Types of Harm</i>	<i>Product Exposures</i>
Benz[a]anthracene	Ingestion	Cancer	See Section VI. Exhibit A
Benzo[a]pyrene	Ingestion	Cancer	See Section VI. Exhibit A
Benzo[b]fluoranthene	Ingestion	Cancer	See Section VI. Exhibit A
Benzo[k]fluoranthene	Ingestion	Cancer	See Section VI. Exhibit A
Indeno [1,2,3-cd]pyrene	Ingestion	Cancer	See Section VI. Exhibit A

## II. NATURE OF ALLEGED VIOLATION

The specific type of product containing the listed chemicals that is causing consumer and occupational exposures in violation of Proposition 65, and that is covered by this Notice, is listed under "Product Category/Type" in Exhibit A in Section VI below. All flame cooked ground beef products within the type covered by this Notice shall hereafter be referred to as "products." The Violators' sales of these products dating as far back as March 24, 2007 are subject to this notice. As a result of the sales of these products, exposures to the listed chemicals have been occurring without clear and reasonable warnings as required by Proposition 65. Without proper warnings regarding the toxic effects of exposures to the listed chemicals in the products, California citizens lack the information necessary to make informed decisions on whether and how to eliminate (or reduce) the risk of exposure to the toxic chemicals from the reasonably foreseeable consumption of the products.

### A. Consumer Product Exposures

California consumers, through the act of buying and consuming the products, are exposed to the listed chemicals. By way of example but not limitation, exposures occur when California citizens eat, sample or otherwise ingest the products. These acts cause consumers to be exposed through the routine consumption of the parts or portions of the products containing the listed chemicals. Additionally, exposures can occur through the routine consumption of other food products (*e.g.*, burger buns) that become contaminated with the listed chemicals through contact with the products and are routinely consumed with the products. People likely to be exposed include both children and adults.

### B. Occupational Exposures

Similarly, California employees of the Violators, through the act of consuming the products, are exposed to the listed chemicals and are, therefore, subject to occupational exposures to the listed chemicals. By way of example but not limitation, exposures occur when employees eat, sample or otherwise ingest the products. These acts cause employees to be exposed through the routine consumption of the parts or portions of the products containing the listed chemicals. Additionally, exposure can occur through the routine consumption of other food products (*e.g.*, burger buns) that become contaminated with the listed chemicals through contact with the products and are routinely consumed with the products. People likely to be exposed include California employees of the Violators.

This notice alleges the violation of Proposition 65 with respect to occupational exposures governed by the California State Plan for Occupational Safety and Health. The State Plan incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997. This approval specifically placed certain conditions with regard to occupational exposures on Proposition 65, including that it does not apply to the conduct of manufacturers occurring outside the State of California. The approval also provides that an employer may use the means of compliance in the general hazard communication requirements to comply with Proposition 65. It also requires that supplemental enforcement is subject to the supervision of the California Occupational Safety and Health Administration. Accordingly, any settlement, civil complaint, or substantive court orders in this matter must be submitted to the Attorney General.

**III. CONTACT INFORMATION**

Please direct all questions concerning this notice to me at the following address:

Dr. Whitney R. Leeman  
c/o David Lavine  
Hirst & Chanler LLP  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710  
Telephone: (510) 848-8880

**IV. PROPOSITION 65 INFORMATION**

For general information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health Hazard Assessment's ("OEHHA") Proposition 65 Implementation Office at (916) 445-6900. For the Violators' reference, I have attached a copy of "Proposition 65: A Summary" which has been prepared by OEHHA.

**V. ADDITIONAL NOTICE INFORMATION**

THIS INFORMATION IS NOT REQUIRED TO BE PROVIDED UNDER CAL. CODE REGS., TITLE 22 § 12903(b)(4).

Identified below is a specific example of a product recently purchased and witnessed as being available for purchase or consumption in California that is within the category or type of offending product covered by this Notice. Based on publicly available information, the retailers, distributors and/or manufacturers of the example within the category or type of product are also provided below. I believe and allege that the sale and consumption of the offending products has occurred without the requisite Proposition 65 "clear and reasonable warning" at one or more locations throughout the State of California including transactions made over-the-counter by the Violators.

<i>Products*</i>	<i>Retailer(s)</i>	<i>Manufacturer(s)/Distributors</i>
Big Barney's Burger	Barney's Gourmet Hamburger; Barney's San Francisco, Inc. Alameda County, Northern California	Currently Unknown

**VI. EXHIBIT A**

<i>Product Category/Type</i>	<i>Such As*</i>	<i>Toxins</i>
Flame Cooked Ground Beef Products	Big Barney's Burger	Benz[a]anthracene
Flame Cooked Ground Beef Products	Big Barney's Burger	Benzo[a]pyrene
Flame Cooked Ground Beef Products	Big Barney's Burger	Benzo[b]fluoranthene
Flame Cooked Ground Beef Products	Big Barney's Burger	Benzo[k]fluoranthene
Flame Cooked Ground Beef Products	Big Barney's Burger	Indeno [1,2,3-cd]pyrene

\*The specifically identified example of the type of product which is subject to this Notice is for the recipients' benefit to assist in their investigation of, among other things, the magnitude of potential exposure to the listed chemicals from other items within the product category listed in Exhibit A. It is important to note that this example is not meant to be an exhaustive or comprehensive identification of each specific offending product of the type listed under "Product Category/Type" in Exhibit A. Further, it is this citizen's position that the alleged Violators are obligated to continue to conduct in good faith an investigation into other specific products within the type or category described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipients' custody or control) during the relevant period so as to ensure that the requisite toxic warnings are provided to California citizens and employees prior to purchase or consumption.

## CERTIFICATE OF MERIT

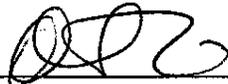
Health and Safety Code Section 25249.7(d)

I, David Lavine, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice have violated Health and Safety Code §25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the *alleged* exposure to the listed chemicals that are the subject of this 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 plaintiff's case can be established and 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. 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 information identified in Health and 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:

Mar. 10, 2008

  
\_\_\_\_\_  
David Lavine

**PROOF OF SERVICE**

I, the undersigned, declare under penalty of perjury:

I am a citizen of the United States, over the age of 18 years, and not a party to the within action; my business address is 2560 Ninth Street, Suite 214, Berkeley, CA 94710.

On March 24, 2008, I served the following documents:

**60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH HEALTH & SAFETY CODE §25249.7(d);**

**PROPOSITION 65: A SUMMARY;**

**CERTIFICATE OF MERIT; AND**

**CERTIFICATE OF MERIT ATTACHMENTS (SERVED ONLY ON THE ATTORNEY GENERAL)**

on the Violators listed below via First Class Certified Mail through the United States Postal Service by placing a true and correct copy in a sealed envelope, addressed to each Violator and providing such envelope to a United States Postal Service Representative:

Albert Sarchar, President  
Barney's Gourmet  
Hamburger  
1591 Solano Avenue  
Berkeley, CA 94707

Albert Sarchar, President  
Barney's San Francisco, Inc.  
1591 Solano Avenue  
Berkeley, CA 94707

Albert Sarchar, President  
Barney's San Francisco, Inc.  
3344 Steiner Street  
San Francisco, CA 94123

Albert Sarchar, President  
Barney's Gourmet  
Hamburger  
3344 Steiner Street  
San Francisco, CA 94123

as well as providing copies of the notice to the public enforcers by placing a true and correct copy in a sealed envelope, addressed to each party listed below, and served as follows:

<i>Via 2<sup>nd</sup> Day Air Service by placing such envelope in a Federal Express Drop-Off Box:</i>	The Attorney General of the State of California;
<i>By placing each envelope in a United States Postal Service mailbox, first class postage prepaid:</i>	The District Attorney for Each of the 58 counties in California; and  The City Attorney for Los Angeles, San Diego, San Jose, San Francisco and Sacramento;

*A list of addresses for each of these recipients is attached.*

Executed on March 24, 2008, at Berkeley, California.

  
Mark Langford