

# Metzger Law Group

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## ATTORNEY GENERAL COPY: CONTAINS OFFICIAL INFORMATION PURSUANT TO EVIDENCE CODE SECTION 1040

February 2, 2010

Joseph DePinto  
President & Chief Executive Officer  
7-Eleven, Inc.  
1722 Routh St., Suite 1000  
Dallas, TX 75201

Melvin Elias  
President & Chief Executive Officer  
International Coffee & Tea, LLC  
1945 S. La Cienega Blvd.  
Los Angeles, CA 90034

Michelle Gass  
President  
Seattle's Best Coffee LLC  
1321 Second Ave., Suite 200  
Seattle, WA 98101

Lamar McKay  
Chairman & President  
BP America Inc.  
4101 Winfield Road  
Warrenville, IL 60555

Mary Gerlick  
President  
Kelly's Coffee & Fudge Factory, Inc.  
9401 Meadow Leaf Ct.  
Bakersfield, CA 93311

Patrick J. O'Dea  
Chief Executive Officer & President  
Peet's Coffee & Tea, Inc.  
1400 Park Ave.  
Emeryville, CA 94608

BP Products North America Inc.  
4101 Winfield Road  
Warrenville, IL 60555

BP West Coast Products LLC  
4 Centerpointe Dr.  
La Palma, CA 90623

Gloria Jean's Gourmet Coffees Corp.  
28 Executive Park, Suite 200  
Irvine, CA 92614

Seattle Coffee Company  
2401 Utah Ave. South  
Suite 800, MS-LA1  
Seattle, WA 98134

Starbucks Holding Company  
2401 Utah Ave. South  
Suite 800, MS-LA1  
Seattle, WA 98134

Howard Schultz  
President & Chief Executive Officer  
Starbucks Corporation  
2401 Utah Ave. South  
Suite 800, MS-LA1  
Seattle, WA 98134

Carl Mount  
Chief Executive Officer  
Gloria Jean's Gourmet Coffees  
Franchising Corp.  
It's a Grind Inc.  
Praise International North America,  
Inc.  
17691 Mitchell North, Suite A  
Irvine, CA 92614

Richard W. Lasater II  
Counsel & Registered Agent  
Gloria Jean's Gourmet Coffees  
Franchising Corp.  
Praise International North America,  
Inc.  
c/o Foley & Lardner LLP  
555 S. Flower Street, Suite 3500  
Los Angeles, CA 90071

Lincoln Watase, President  
Winchell's Donut Houses Operating  
Company, L.P.  
Winchell's Franchising, LLC  
Yum Yum Donut Shops, Inc.  
18830 E. San Jose Ave.  
City of Industry, CA 91748

### **RE: NOTICE OF PROPOSITION 65, CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.6, VIOLATIONS: EXPOSURE OF CONSUMERS TO CARCINOGENIC SUBSTANCES WITHOUT FIRST GIVING WARNINGS**

Dear Gentilepersons:

This firm represents the Council for Education and Research on Toxics ("CERT"), a California public benefit corporation whose charitable purposes are education and research regarding toxic substances.

This letter constitutes notice that 7-Eleven, Inc., BP America Inc., BP Products North America Inc., BP West Coast Products LLC, Gloria Jean's Gourmet Coffees Corp., Gloria Jean's Gourmet Coffees Franchising Corp., It's a Grind Inc., International Coffee & Tea, LLC, Kelly's Coffee & Fudge Factory, Inc., Peet's Coffee & Tea, Inc., Praise International North America, Inc., Seattle's Best Coffee LLC, Seattle Coffee Company, Starbucks Corporation, Starbucks Holding Company, Winchell's Donut Houses Operating Company, L.P., Winchell's Franchising, LLC, and Yum Yum Donut Shops, Inc., have violated and continue to violate provisions of the California Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.5 *et seq* (commonly known as California's Proposition 65). Specifically, the above named entities have violated and continue to violate Health & Safety Code § 25249.6, which provides: "No 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 . . . ."

Pursuant to Health & Safety Code §25249.7(d), CERT intends to bring suit in the public interest against the above named entities sixty (60) days hereafter to correct the violations set forth herein.

General Information: Pursuant to 22 California Code of Regulations § 12903(b)(1), attached hereto is a copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary," as prepared by the Office of Environmental Health Hazard Assessment of the California Environmental Protection Agency.

Description of Violation: Since June 2002, and continuing to the present, the above named entities have exposed and continue to expose California consumers purchasing ready-to-drink coffee to high levels of acrylamide — a toxic chemical contained in the ready-to-drink coffee of the above named entities. Exposures to acrylamide unavoidably occurred via ingestion whenever a consumer purchased and thereafter consumed the above named entities' acrylamide-containing, ready-to-drink coffee. Testing of the above named entities' ready-to-drink coffee has shown that even a single, small (12-ounce) serving of ready-to-drink coffee contains approximately 10 times more acrylamide than the No Significant Risk Level ("NSRL") for acrylamide established by California's Office of Environmental Health Hazard Assessment ("OEHHA"). Acrylamide is a toxic chemical known to the State of California to cause cancer and has been listed since January 1990 as a carcinogen on the list of carcinogenic chemicals published by the Governor of the State of California at 22 California Code of Regulations § 1200(b). Because acrylamide is listed in Proposition 65 as a carcinogen, pursuant to Health & Safety Code § 25249.6, the above named entities were, and are, required to warn their customers that their ready-to-drink coffee contains a chemical known by the State of California to cause cancer before exposing said customers to acrylamide contained therein. Since June 2002, the above named entities violated and continue to violate California Health & Safety Code § 25249.6 by exposing numerous individuals within the State of California to acrylamide without first giving clear and reasonable warnings to said individuals that their ready-to-drink coffee contains a chemical known by the State of California to cause cancer.

Noticing Entity: The noticing entity is the Council for Education and Research on Toxics (“CERT”), a California public benefit corporation whose charitable purposes are education and research regarding toxic substances. The responsible person within the noticing entity is Raphael Metzger, CERT’s General Counsel, to whom all communications should be directed at the following address and telephone number:

Metzger Law Group  
Raphael Metzger, Esq.  
401 E. Ocean Blvd., Suite 800  
Long Beach, CA 90802  
ph: 562-437-4499  
fax: 562-436-1561

Names of Violators: The violators are 7-Eleven, Inc., a Texas corporation; BP America Inc., a Delaware corporation; BP Products North America Inc., a Maryland corporation; BP West Coast Products LLC, a Delaware corporation; Gloria Jean’s Gourmet Coffees Corp., an Illinois corporation; Gloria Jean’s Gourmet Coffees Franchising Corp., an Illinois corporation; International Coffee & Tea, LLC, a Delaware corporation; It’s a Grind Inc., a California corporation; Kelly’s Coffee & Fudge Factory, Inc., a California corporation; Peet’s Coffee & Tea, Inc., a Washington corporation; Praise International North America, Inc., a Delaware corporation; Seattle’s Best Coffee LLC, a Washington corporation; Seattle Coffee Company, a Georgia corporation; Starbucks Corporation, a Washington corporation; Starbucks Holding Company, a Washington corporation; Winchell’s Donut Houses Operating Company, L.P., a foreign corporation; Winchell’s Franchising, LLC, a California corporation; Yum Yum Donut Shops, Inc., a California corporation; and Does 1 through 1000, inclusive.

Time of Violations: The violations of California Health & Safety Code § 25249.6 are numerous and have been continuous and uninterrupted since approximately June 2002 to the present throughout the State of California. The timing of the violations is such that they occurred every moment that every individual within the State of California purchased and thereafter ingested acrylamide from the above named entities’ ready-to-drink coffee without first receiving the required Proposition 65 warnings.

Listed Chemicals: The carcinogenic chemical in the coffee of the above named entities which is the subject of the named entities’ Proposition 65 violations is acrylamide, CAS No. 79-06-1, which was first listed at 22 California Code of Regulations § 1200(b) as a chemical known to the State of California to cause cancer on January 1, 1990.

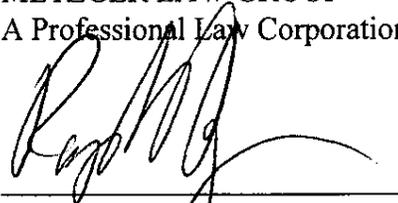
Consumer Product Exposure Description: Since June 2002, and continuing to the present, the above named entities have exposed and continue to expose California consumers purchasing ready-to-drink coffee to high levels of acrylamide — a toxic chemical contained in the ready-to-drink coffee of the above named entities. Exposures to acrylamide unavoidably occurred via

ingestion whenever a consumer purchased and thereafter consumed the above named entities' ready-to-drink coffee. Tests have shown that the even a single, small (12-ounce) serving of the above named entities' ready-to-drink coffee contains approximately 10 times more acrylamide than the No Significant Risk Level ("NSRL") for acrylamide established by California's Office of Environmental Health Hazard Assessment ("OEHHA"). Acrylamide is a toxic chemical known to the State of California to cause cancer and has been listed since January 1990 as a carcinogen on the list of carcinogenic chemicals published by the Governor of the State of California at 22 California Code of Regulations § 1200(b). Because acrylamide is listed in Proposition 65 as a carcinogen, pursuant to Health & Safety Code § 25249.6, the above named entities were, and are, required to warn their customers that their ready-to-drink coffee contains a chemical known by the State of California to cause cancer before exposing said customers to acrylamide contained therein. Since June 2002, the above named entities violated and continue to violate California Health & Safety Code § 25249.6 by exposing numerous individuals within the State of California to acrylamide without first giving clear and reasonable warnings to said individuals that their ready-to-drink coffee contains a chemical known by the State of California to cause cancer. The above named entities' Proposition 65 violations are particularly egregious and hazardous given the high concentrations of acrylamide contained in their ready-to-drink coffee and given the fact that most consumers of ready-to-drink coffee drink more than a single, small (12-ounce) serving of coffee per day.

Conclusion. Proposition 65 requires that notice and intent to sue be given to a violator sixty (60) days before suit is filed. By this letter, CERT gives notice of the foregoing violations to the above named entities, and to the appropriate governmental authorities. If the above named entities wish to resolve this matter before CERT files suit, they should contact counsel at the above-mentioned address and telephone number. Otherwise, suit will be filed after sixty (60) days have elapsed. We look forward to your prompt action terminating the exposures of California consumers to the toxic hazards of acrylamide contained in your ready-to-drink coffee, or providing the required and necessary warnings regarding the acrylamide contained in your ready-to-drink coffee.

Very truly yours,

METZGER LAW GROUP  
A Professional Law Corporation



By: Raphael Metzger, Esq.  
General Counsel of CERT

cc: all governmental authorities per attached proof of service

attachments: Summary of Proposition 65; Certificate of Merit; Proof of Service by Mail

**CERTIFICATE OF MERIT**  
**Health and Safety Code Section 25249.6**

I, Raphael Metzger, hereby declare:

1. I am an attorney at law, duly licensed and authorized to practice law in the State of California.

2. Unless the context indicates otherwise, I have personal knowledge of the matters set forth hereinafter and, if called as a witness, I would competently testify thereto.

3. I am General Counsel for the noticing party, Council for Education and Research on Toxics, a California corporation whose charitable purposes are education and research regarding toxic substances.

4. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the parties identified in the notice have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings regarding the acrylamide contained in their ready-to-drink coffee.

5. Council for Education and Research on Toxics alleges that since approximately June 2002, and continuing to the present, the entities identified in the notice have exposed and continue to expose California consumers purchasing ready-to-drink coffee to high levels of acrylamide — a toxic chemical contained in the ready-to drink coffee of the entities identified in the attached notice. Exposures to acrylamide unavoidably occurred via ingestion whenever a consumer purchased and thereafter consumed the acrylamide-containing, ready-to-drink coffee of the entities identified in the attached notice. Indeed, testing of the ready-to-drink coffee of the entities identified in the attached notice has shown that even a single, small (12-ounce) serving of ready-to-drink coffee contains approximately 10 times more acrylamide than the No Significant Risk Level (“NSRL”) for acrylamide established by California’s Office of Environmental Health Hazard Assessment (“OEHHA”). Acrylamide is a toxic chemical known to the State of California to cause cancer and has been listed since January 1990 as a carcinogen on the list of carcinogenic chemicals

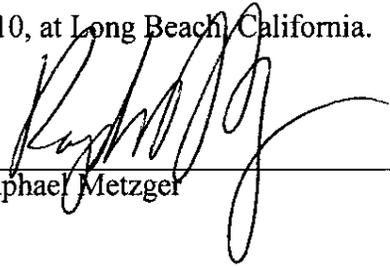
published by the Governor of the State of California at 22 California Code of Regulations § 1200(b). Because acrylamide is listed in Proposition 65 as a carcinogen, pursuant to Health & Safety Code § 25249.6, the entities identified in the attached notice were, and are, required to warn their customers that their ready-to-drink coffee contains a chemical known by the State of California to cause cancer before exposing said customers to acrylamide contained therein. Since June 2002, the entities identified in the attached notice violated and continue to violate California Health & Safety Code § 25249.6 by exposing numerous individuals within the State of California to acrylamide without first giving clear and reasonable warnings to said individuals that their ready-to-drink coffee contains a chemical known by the State of California to cause cancer.

6. I have consulted with an expert who has reviewed facts, studies, and other data regarding the presence of, concentration of, and exposure to acrylamide from the ready-to-drink coffee of the entities identified in the attached sixty-day notice. The expert that I consulted has the relevant and appropriate experience and expertise to review said facts, studies, and data because this expert holds a Ph.D. in toxicology, has published a number of peer-reviewed articles regarding risk assessment in general and acrylamide risk assessment in particular, and is employed as a senior researcher who regularly performs risk assessments and who supervises and lectures Ph.D. and masters thesis students in the areas of toxicology and risk assessment.

7. Based on the information obtained through my consultation, and on all other information in my possession, I believe that exposures to high levels of acrylamide unavoidably occurred via ingestion whenever a consumer purchased and consumed the ready-to-drink coffee of the entities identified in the attached sixty-day notice from approximately June 2002, and continuing to the present. I also believe, based on my consultation and the information in my possession, that there is a reasonable and meritorious case for a private action, pursuant to Health & Safety Code §25249.7(d). I understand that “reasonable and meritorious case for private action” means that information provides a credible basis that all elements of the private action 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.

8. 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 person consulted with and relied on by the certifier, and (2) the facts and other data reviewed by that person.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed February 2, 2010, at Long Beach, California.

  
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Raphael Metzger