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August 24, 2012

**BY U.S. FIRST CLASS MAIL**

Susan Fiering  
Supervising Deputy Attorney General  
Department of Justice  
1515 Clay Street, 20<sup>th</sup> Fl.  
P.O. Box 70550  
Oakland, CA 94612-0550

***Re: Notice of Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65), Section 25249.6 of the California Health and Safety Code, for Exposing Consumers of Reddi-wip whipped topping to Nitrous Oxide***

Dear Ms. Fiering:

Christine Sturges is a citizen of California who takes a strong interest in ensuring that the provisions of the California Safe Drinking Water and Toxic Enforcement Act are followed by companies that produce products that she purchases.

This letter constitutes notice that the entities identified in Exhibit A have violated and continue to violate provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code sections 25249.5, et seq. Specifically, these entities have violated and continue to violate the warning requirement at section 25249.6 of the California Health and Safety Code, 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 ..."

The entity subject to this Notice is ConAgra Foods, Inc. ("ConAgra"). Consumer food products sold by ConAgra contain Nitrous Oxide, a chemical known to the State to cause reproductive toxicity. On each and every day from June 29, 2009 through the present, ConAgra has exposed and continues to expose consumers of their food products to Nitrous Oxide. Exposure to the consumers has occurred through ingestion of the food products. The categories of food products that are the subject of this Notice are Reddi-wip whipped topping products that use Nitrous

Oxide as a propellant. Specific examples of food products that are the subject of this Notice are identified in the document attached as Exhibit A.

Because Nitrous Oxide is a chemical listed in Proposition 65 as a reproductive toxin, pursuant to Health and Safety Code § 25249.6, ConAgra was, and is, required to provide clear and reasonable warnings to all consumers of food products before exposing them to Nitrous Oxide. As of June 2012, there is no Maximum Allowable Dose Level, or other "safe harbor," for Nitrous Oxide.

Pursuant to Health and Safety Code section 25249.7(d), Christine Sturges intends to bring suit in the public interest against the entities in Exhibit A sixty days hereafter to correct the violation occasioned by the failure to warn all consumers of the exposure to Nitrous Oxide.

Pursuant to 27 California Code of Regulations § 25903(b)(1), attached as Exhibit B is a copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary," a summary of Proposition 65 prepared by the Office of Environmental Health Hazard Assessment of the California Environmental Protection Agency.

Pursuant to Health and Safety Code § 25249.7(d)(1), the undersigned hereby includes with the copy of this notice to the Attorney General a confidential Certificate of Merit.

While violations are occurring throughout the State of California, the noticing parties are unable to know for certain if violations are occurring in all of the 58 counties in California. Therefore, pursuant to 27 California Code of Regulations § 25903(c)(3), the noticing parties are providing this notice to the district attorney for each of the 58 counties in California. Further, the noticing parties provide this notice to the California Attorney General and the city attorneys for the cities of Los Angeles, San Diego, San Francisco and San Jose.

Christine Sturges is represented in this matter by the law firm of Pratt & Associates. All communications concerning this matter should be directed to:

Pierce Gore  
PRATT & ASSOCIATES  
1901 S. Bascom Avenue, Suite 350  
Campbell, CA 95008  
Telephone: (408) 429-6506  
Fax: (408) 369-0752  
[pgore@prattattorneys.com](mailto:pgore@prattattorneys.com)

Sincerely,  
PRATT & ASSOCIATES



Pierce Gore  
Attorney for Christine Sturges

Enclosures

cc: Attorney General of California (with attached confidential factual information supporting Certificate of Merit), Los Angeles City Attorney, San Diego City Attorney, City Attorney of San Francisco, San Jose City Attorney, District Attorneys for California's 58 Counties (see attached certificate of service)

EXHIBIT A  
August 24, 2012 Notice of Violation  
Nitrous Oxide in ConAgra Food Products like Reddi-wip Whipped Cream

| <b>Responsible Party</b>   | <b>Non-Exclusive Examples<br/>of the Products</b>   |
|--|---|
| <b>ConAgra Foods, Inc.</b><br>One ConAgra Drive<br>Omaha, NE 68102 | Original Reddi-wip<br>Chocolate Reddi-wip<br>Fat Free Reddi-wip<br>Extra Creamy Reddi-wip |

**FOR FURTHER INFORMATION...**

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900.

**CERTIFICATE OF MERIT**  
**Health & Safety Code Section 25249.7(d)**

I, Pierce Gore, hereby declare:

1. This Certificate of Merit accompanies the attached notice of violation in which it is alleged that the parties identified in the notice have violated Health & Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney representing Christine Sturges.
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 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 & 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: August 24, 2012

Pierce Gore  
Pierce Gore, Attorney for  
Christine Sturges

**CERTIFICATE OF SERVICE**

I am employed in Santa Clara County, California; my business address is Pratt & Associates, 1901 S. Bascom Avenue, Suite 350, Campbell, CA 95008. I am over the age of 18 years and not a party to the within cause and my electronic notification address is [pgore@prattattorneys.com](mailto:pgore@prattattorneys.com).

On August 24, 2012 I served the following document(s):

- **NOTICE OF VIOLATION OF THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65), SECTION 25249.6 OF THE CALIFORNIA HEALTH AND SAFETY CODE, FOR EXPOSING CONSUMERS OF CONAGRA FOOD PRODUCTS INCLUDING REDDI-WIP TO NITROUS OXIDE**
- **CERTIFICATE OF MERIT; and**
- **THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY**

by UNITED STATE FIRST CLASS MAIL by placing a true and correct copy thereof in an envelope addressed to each of the persons named below at the address shown, and by sealing and depositing said envelope in the United States mail at Campbell, California, with postage fully prepaid to:

**See Attached List.**

Executed on this 24<sup>th</sup> day of August, 2012 at Campbell, California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

  
Elaine Durand

**SERVICE LIST**

District Attorney of Alameda County  
1225 Fallon Street, Room 900  
Oakland, CA 94612

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Los Angeles, CA 90012

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San Diego, CA 92101

San Francisco City Attorney's Office  
City Hall, Room 234  
San Francisco, CA 94102

District Attorney of Trinity County  
P.O. Box 1310  
Weaverville, CA 96093

Gary M. Rodkin  
President & Chief Executive Officer  
ConAgra, Foods, Inc.  
One ConAgra Drive  
Omaha, NE 68102  
**(VIA CERTIFIED MAIL, RETURN  
RECEIPT REQUESTED)**