

## NOTICE OF VIOLATION

### California Safe Drinking Water and Toxic Enforcement Act

#### Lead in Ginger and Fruit Snack Food

October 8, 2012

This Notice of Violation is provided to you pursuant to and in compliance with California Health and Safety Code Section 25249.7(d).

- For general information regarding the California Safe Drinking Water and Toxic Enforcement Act, see the attached summary provided by the California EPA (copies not provided to public enforcement agencies).
- This Notice of Violation is provided by the Center for Environmental Health ("CEH"), 2201 Broadway, Suite 302, Oakland, CA 94612, (510) 655-3900. CEH is a nonprofit corporation dedicated to protecting the environment, improving human health and supporting environmentally sound practices. Charlie Pizarro is the Associate Director of and a responsible individual within CEH.

#### **Description of Violation:**

- Violators: The names and addresses of the violators are listed on the attached Exhibit 1.
- Time Period of Exposure: The violations have been occurring since at least October 8, 2009, and are continuing to this day.
- Provision of Proposition 65: This Notice of Violation covers the "warning provision" of Proposition 65, which is found at California Health and Safety Code Section 25249.6.
- Chemical(s) Involved: The names of the listed chemicals involved in these violations are lead and lead compounds ("Lead"). Exposures to Lead occur from consumption of the products identified in this Notice.
- Type of Product: The specific type of product causing this violation is ginger and fruit snack food. Non-exclusive examples of this specific type of product are listed on the attached Exhibit 1.
- Description of Exposure: This Notice addresses consumer exposures to Lead. Consumption of the products identified in this Notice results in human exposures to Lead. The products contain Lead. The primary route of exposure for the violations is direct ingestion when consumers eat the ginger and fruit snack food. These exposures occur in homes, workplaces and everywhere else throughout California where the products are consumed. No clear and reasonable warning is provided with these products regarding the carcinogenic or reproductive hazards of Lead.

#### **Resolution of Noticed Claims:**

Based on the allegations set forth in this Notice, CEH intends to file a citizen enforcement lawsuit against each of the alleged violators unless such violators

agree in a binding written instrument to: (1) recall products already sold; (2) provide clear and reasonable warnings for products sold in the future or reformulate such products to eliminate the Lead exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health and Safety Code Section 25249.7(b). If any of the alleged violators is interested in resolving this dispute without resort to expensive and time-consuming litigation, please feel free to contact CEH through its counsel identified below. It should be noted that CEH cannot: (1) finalize any settlement until after the 60-day notice period has expired; nor (2) speak for the Attorney General or any District or City Attorney who received CEH's 60-day Notice. Therefore, while reaching an agreement with CEH will resolve its claims, such agreement may not satisfy the public prosecutors.

Please direct any inquiries regarding this Notice to CEH through its counsel Eric S. Somers (esomers at lexlawgroup.com) at Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117, (415) 913-7800.

**EXHIBIT 1  
October 8, 2012 Notice of Violation  
Lead in Ginger and Fruit Snack Food**

<b>Responsible Parties</b>	<b>Non-Exclusive Examples of the Products</b>
<p align="center"><b>American Importing Company, Inc.</b> 550 Kasota Avenue S.E. Minneapolis, MN 55414</p>	<p align="center">Albertson's Ginger SKU No. 0-71725-71218-9</p>
<p align="center"><b>Draeger's Super Markets</b> 291 Utah Street South San Francisco, CA 94080</p>	<p align="center">Bulk Crystallized Ginger</p>
<p align="center"><b>Fortune Commercial Corporation</b> 2883 Surveyor Street Pomona, CA 91768</p>	<p align="center">Mei Yuan Mint Dried Prune SKU No. 4-710372-950662</p>
<p align="center"><b>Grand Bk Corp.</b> 47-08 Grand Avenue Maspeth, NY11378</p>	<p align="center">Goodies By Nature Crystallized Ginger SKU No. 8-46034-01008-6</p>
<p align="center"><b>H Mart, Inc.</b> 300 Chubb Avenue Lyndhurst, NJ 07071</p> <p align="center"><b>HAR Grand Corp.</b> 300 Chubb Avenue Lyndhurst, NJ 07071</p> <p align="center"><b>Han Ah Reum Corp.</b> 300 Chubb Avenue Lyndhurst, NJ 07071</p>	<p align="center">Goodies By Nature Crystallized Ginger SKU No. 8-46034-01008-6</p>

<p><b>Jade Food Products, Inc.</b> 94-476 Ko'aki Street Waipahu, HI 96797</p>	<p>Jade Rock Salt Plum SKU No. 0-73366-12001-9</p>
<p><b>Maruhana U.S.A. Corporation</b> 4455 Sheila Street Commerce, CA 90023</p>	<p>Dried Plum SKU No. 4-905491-254610</p>
<p><b>Marukai Corporation U.S.A.</b> 1740 West Artesia Boulevard Gardenia, CA 90248</p>	<p>Jade Rock Salt Plum SKU No. 0-73366-12001-9</p>
	<p>Island Cravings Seedless Sweet Li Hing Mui SKU No. 0-73366-30033-6</p>
<p><b>Mitsuwa Corporation</b> 1815 W. 213<sup>th</sup> Street, Suite 235 Torrance, CA 90501</p>	<p>Nobel Dry Plum SKU No. 4-902123-023049</p>
	<p>Dried Plum SKU No. 4-905491-254610</p>
<p><b>New Albertson's, Inc.</b> 250 East Parkcenter Boulevard Boise, ID 83726</p> <p><b>Albertson's LLC</b> 250 East Parkcenter Boulevard Boise, ID 83726</p> <p><b>SUPERVALU Inc.</b> 7075 Flying Cloud Drive Eden Prairie, MN 55344</p>	<p>Albertson's Ginger SKU No. 0-71725-71218-9</p>
<p><b>Reed's, Inc.</b> 13000 South Spring Street Los Angeles, CA 90061</p>	<p>Reed's Crystallized Ginger SKU No. 8274-12345-6</p>

<p><b>T-West, Inc.</b> 19016 S. Vermont Avenue Gardena, CA 90248</p>	<p>Nobel Dry Plum SKU No. 4-902123-023049</p>
<p><b>Wholesale Unlimited, Inc.</b> 94-110 Kopake Street Waipahu, HI 96797</p>	<p>Island Cravings Seedless Sweet Li Hing Mui SKU No. 0-73366-30033-6</p>

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

I, Eric S. Somers, hereby declare:

1. 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 & Safety Code § 25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney with the Lexington Law Group, and I represent the noticing party, the Center for Environmental Health.

3. Members of my firm and 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 exposures to the listed chemical that is the subject of the action.

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 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 the 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 § 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.

October 8, 2012

  
\_\_\_\_\_  
Eric S. Somers  
Attorney for CENTER FOR  
ENVIRONMENTAL HEALTH

## PROOF OF SERVICE BY MAIL AND ELECTRONIC MAIL

I declare that:

I am employed in San Francisco County, California; my business address is 503 Divisadero Street, San Francisco, California 94117. I am over the age of 18 years and not a party to the within cause and my electronic notification address is [jbanister@lexlawgroup.com](mailto:jbanister@lexlawgroup.com).

On October 8, 2012, I served true copies of the following documents:

**NOTICE OF VIOLATION OF CALIFORNIA SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT;**

**CERTIFICATE OF MERIT;** and

**THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY** (only sent to those on service list marked with an asterisk).

On this date, I deposited fully prepaid and sealed envelopes containing the above-mentioned documents with the United States Postal Service, addressed to the following individuals:

*Please see attached service list.*

Also on this date, I transmitted via electronic mail the documents listed above to the electronic mail addresses set forth below at 2:14 p.m. on October 8, 2012:

Lon Wixson, Deputy District  
Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
[lwixson@contracostada.org](mailto:lwixson@contracostada.org)

Karyn Sinunu-Towery,  
Assistant District Attorney  
Santa Clara County  
70 West Hedding Street, West Wing  
San Jose, CA 95110  
[epu@da.sccgov.org](mailto:epu@da.sccgov.org)

Birgit Fladager, District Attorney  
Stanislaus County  
832 12<sup>th</sup> Street, Ste. 300  
Modesto, CA 95354  
[Prop65@standa.org](mailto:Prop65@standa.org)

Gary Lieberstein, District Attorney  
Napa County  
931 Parkway Mall  
Napa, CA 94559  
[CEPD@countyofnapa.org](mailto:CEPD@countyofnapa.org)

Dije Ndreu, Deputy District Attorney  
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Salinas, CA 93901  
[Prop65DA@co.monterey.ca.us](mailto:Prop65DA@co.monterey.ca.us)

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[Prop65@co.tulare.ca.us](mailto:Prop65@co.tulare.ca.us)

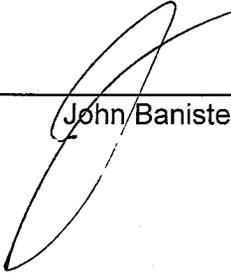
Gregory D. Totten, District Attorney Ventura  
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Ventura, CA 93009  
[daspecialops@ventura.org](mailto:daspecialops@ventura.org)

Paul E. Zellerbach, District Attorney  
Riverside County  
4075 Main Street  
Riverside, CA 92501  
[Prop65@rivcoda.org](mailto:Prop65@rivcoda.org)

The transmission was reported as complete and without error.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on October 8, 2012, at San Francisco, California.

Signed: \_\_\_\_\_

  
John Banister

## SERVICE LIST

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

District Attorney of Alpine County  
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Markleeville, CA 96120

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708 Court Street, Ste. 202  
Jackson, CA 95642

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San Andreas, CA 95249

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Colusa, CA 95932

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Ukiah, CA 95482

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Alturas, CA 96101-4020

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Redwood City, CA 94063

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Los Angeles, CA 90012

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San Diego, CA 92101

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Office  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

San Jose City Attorney's Office  
200 East Santa Clara Street  
San Jose, CA 95113

California Attorney General's Office  
Attention: Proposition 65  
Coordinator and Robert Thomas  
1515 Clay Street, Ste. 2000  
P.O. Box 70550  
Oakland, CA 94612-0550

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