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November 4, 2014

**ATTORNEY GENERAL COPY: CONTAINS OFFICIAL
INFORMATION PER EVIDENCE CODE § 1040**

**NOTICE OF VIOLATION OF
CALIFORNIA HEALTH & SAFETY CODE § 25249.5 ET SEQ.**

Dear Public Enforcement Agencies:

Shute, Mihaly & Weinberger LLP (“Firm”) represents As You Sow (“AYS”); a 501(c)(3) non-profit corporation dedicated to, among other causes, the protection of the environment, toxics reduction, the promotion of and improvement of human health, the improvement of worker and consumer rights, environmental education, and corporate accountability. AYS is based in Oakland, California, and was incorporated in 1992 under the laws of the State of California.

This Firm and AYS have documented violations of California’s Safe Drinking Water & Toxic Enforcement Act of 1986 (“Proposition 65”), codified at Health & Safety Code section 25249.5 et seq. This letter serves to provide this Firm’s and AYS’s notification of these violations to the public enforcement agencies. Pursuant to section 25249.7(d) of the statute, this Firm intends to bring an enforcement action on behalf of AYS sixty days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

A summary of the statute and its implementing regulations, which was prepared by the lead agency designated under the statute, is enclosed with the notices served upon the violators. The specific details of the violations that are the subject of this notice are provided below.

Alleged violators. The name of the violators covered by this notice are:

- Bissinger’s Inc.
- Champlain Chocolate Company
- The Hershey Company
- The Kroger Company

- Moonstruck Chocolate Company
- Theo Chocolate, Inc.
- Trader Joe's Company
- Vosges, Ltd.

Chemicals. These violations involve exposures to lead and/or cadmium from the products listed below. The State of California has officially listed lead as a chemical known to cause cancer. The State of California has also officially listed both lead and cadmium as chemicals known to cause birth defects or reproductive harm. *See* Chemicals Known to the State to Cause Cancer or Reproductive Toxicity, available at http://oehha.ca.gov/prop65/prop65_list/Newlist.html.

Consumer products. The products that are the subject of this notice are:

- Bissinger's All Natural 60% Dark Chocolate with Whole Almonds (Bar), which is manufactured, distributed and/or sold in California by Bissinger's, Inc. [lead only]
- Lake Champlain Dark Chocolate (Bar) (Organic) (57% Cacao), which is manufactured, distributed, and/or sold in California by Champlain Chocolate Company [cadmium and lead]
- Dagoba Organic Chocolate New Moon Rich Dark Chocolate (Bar), which is manufactured, distributed, and/or sold in California by the Hershey Company [cadmium and lead]
- Private Selection 72% Cacao Swiss Dark Chocolate (Bar), which is manufactured, distributed, and/or sold in California by the Kroger Company [cadmium and lead]
- Moonstruck Dark Chocolate Chile Variado (Bar) (68% Cacao), which is manufactured, distributed, and/or sold in California by Moonstruck Chocolate Co. [lead only]
- Theo Organic Fair Trade Pure 85% Dark Chocolate (Bar), which is manufactured, distributed, and/or sold in California by Theo Chocolate, Inc. [cadmium only]
- Trader Joe's Dark Chocolate Bar – Toffee with Walnuts and Pecans (70% Cacao), which is manufactured, distributed, and/or sold in California by Trader Joe's Company [lead only]
- Trader Joe's Dark Chocolate Lover's Chocolate Bar (85% Cacao), which is manufactured, distributed, and/or sold in California by Trader Joe's Company [cadmium and lead]
- Trader Joe's Organic Dark Chocolate 73% Cacao Super Dark (Bar), which is manufactured, distributed, and/or sold in California by Trader Joe's Company [cadmium and lead]

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- Trader Joe's Pound Plus Dark Chocolate (Bar), which is manufactured, distributed, and/or sold in California by Trader Joe's Company [lead only]
- Trader Joe's Pound Plus Dark Chocolate (Bar) (72% Cacao), which is manufactured, distributed, and/or sold in California by Trader Joe's Company [lead only]
- Trader Joe's Swiss Dark Chocolate (72% Cacao) (Bar), which is manufactured, distributed, and/or sold in California by Trader Joe's Company [lead only]
- Wild Ophelia All Natural New Orleans Chili – Dark Chocolate Bar (70% Cacao), which is manufactured, distributed, and/or sold in California by Vosges, Ltd. [lead only]

Route of exposure. Use of the products identified in this notice result in human exposures to lead and cadmium. The route of exposure is ingestion, when consumers consume these products as directed on their labels. No clear and reasonable warning is provided with the products regarding the cancer-causing effects of lead or the reproductive hazards of lead or cadmium.

Duration of violation. These ongoing violations have occurred on every day since at least November 3, 2013, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are removed from the products.

Pursuant to Title 11, Cal. Code Regs. section 3100, a certificate of merit is attached hereto.

In keeping with its public interest mission and to expeditiously rectify this ongoing violation of California law, AYS is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation. You may communicate directly with AYS to discuss an early resolution of this matter by contacting Danielle Fugere, President, 1611 Telegraph Avenue, Suite 1450, Oakland, CA 94612, (510) 735-8158. You may also contact AYS's counsel:

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& WEINBERGER LLP

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Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Ellison Folk

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CERTIFICATE OF MERIT

(for As You Sow's Notice of Proposition 65 Violation on Bissinger's, Inc.; Champlain Chocolate Company; The Hershey Company; The Kroger Company; Moonstruck Chocolate Company; Theo Chocolate, Inc.; Trader Joe's Company; Vosges, Ltd.)

I, Ellison Folk, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the parties in the notice have violated section 25249.6 of the Health and Safety Code by failing to provide clear and reasonable warnings.
2. I am an 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 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 plaintiff's case can be established and that 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 has attached to it to it factual information sufficient to establish the basis for this certificate, including the information identified in section 25249.7(h)(2) of the Health and Safety Code, 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: 11-14-2014



Ellison Folk

Enclosure (For Attorney General Copy only)

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

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: 396 Hayes Street, San Francisco, CA 94102.

On November 4, 2014, I served the following documents:

- Notice of Violation of California Health & Safety Code section 25249.5 et seq.
- Certificate of Merit
- “The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary”

on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below, and depositing it at a United States Postal Service Office for delivery by Certified Mail:

Kenneth Kellerhals, Chief Executive Officer
Bissinger's , Inc.
3983 Gratiot St.
Saint Louis, MO 63110

James S. Lapman, President
Champlain Chocolate Company
750 Pine St.
Burlington, VT 05401

John P. Bilbrey, President
The Hershey Company
100 Crystal A Dr.
Hershey, PA 17033

W. Rodney McMullen,
Chief Executive Officer
The Kroger Company
1014 Vine St.
Cincinnati, OH 45202

Dan Hossley, Chief Executive Officer
Moonstruck Chocolate Company
6600 N. Baltimore Ave.
Portland, OR 97203

Joseph Whinney, Chief Executive Officer
Theo Chocolate, Inc.
3400 Phinney Ave. N.
Seattle, WA 98103

Daniel T. Bane, Chief Executive Officer
Trader Joe's Company
800 S. Shamrock Ave.
Monrovia, CA 91016

Katrina Markoff, Chief Executive Officer
Vosges, Ltd.
2950 N. Oakley Ave.
Chicago, IL 60618

On November 4, 2014, I served the following documents:

- Notice of Violation of California Health & Safety Code section 25249.5 et seq.
- Certificate of Merit, including Supporting Documentation Required by Title 11, C.C.R. § 3102

on the Attorney General of the State of California by electronic service of the Attorney General's Proposition 65 60 Day Notice Filing system.

On November 4, 2014, I served the following documents:

- Notice of Violation of California Health & Safety Code section 25249.5 et seq.
- Certificate of Merit

on each of the parties on the service list attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the service list attached hereto, and depositing it at United States Postal Service mail box for delivery by First Class Mail.

Executed on November 4, 2014, at San Francisco, California.



David Weibel

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