

Melvin B. Pearlston  
Senior Counsel



Of Counsel  
Robert B. Hancock

May 10, 2016

**60-DAY NOTICE OF VIOLATIONS OF  
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET. SEQ.  
(PROPOSITION 65)**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Erika McCartney in this matter. Ms. McCartney has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et. seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with the identified products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, Ms. McCartney intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**General Information about Proposition 65.** A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is an attachment with the copy of this letter served to the alleged Violator identified below.

**Alleged Violator.** The name of the companies covered by this notice that violated Proposition 65 (hereinafter "the Violators") are:

**Whole Foods Market California, Inc.  
Whole Foods Market, Inc.  
River Canyon Retreat, Inc., d/b/a Earth Circle Organics**

**Consumer Products and Listed Chemical.** The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

**Bulk Organic Dark Cacao Powder – Cadmium**

On May 1, 1997, the State of California officially listed cadmium as a chemical known to cause developmental toxicity, and male reproductive toxicity.

It should be noted that Ms. McCartney may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

**Route of Exposure.** The consumer exposures that are the subject of this notice result from the purchase, acquisition, and recommended use of these products. Consequently, the primary route of exposure to these chemicals has been and continues to be through ingestion.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least May 10, 2015, as well as every day since the products were introduced into the

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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 either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons using these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, Ms. McCartney is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) recall any products already sold, or undertake best efforts to ensure that the requisite health hazard warnings are provided to those who have received such products; (2) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; and (3) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as expensive and time-consuming litigation. It should be noted that counsel cannot (1) finalize any settlement until after the 60-day notice period has expired; or (2) speak for the California Attorney General or any District or City Attorney who has received this notice. Therefore, while reaching an agreement may satisfy the claims alleged herein, such agreement may not be satisfactory to public prosecutors.

Ms. McCartney has retained me as legal counsel in connection with this matter. Her address is 1341 58<sup>th</sup> Ave. #11, Oakland, California, 94621. Her telephone number is 707.502.8635. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



Robert B. Hancock

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Violators only)

Additional Supporting Information for Certificate of Merit (to AG only)

**CERTIFICATE OF MERIT**

**Re: Notice of Proposition 65 Violations**

Robert B. Hancock declares:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 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 have reviewed facts, studies, or other data regarding the exposures to the listed chemicals that are the subject of the action.

4. Based on the information obtained through those consultants, 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 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. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California 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.

Dated: May 10, 2016

  
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Robert B. Hancock

**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 of age, and am not a party to the within action.

On May 10, 2016, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §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 in a US Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President  
Whole Foods Market, Inc.  
555 Bowie Street  
Austin, TX 78703-4644

Current CEO or President  
River Canyon Retreat, Inc.  
d/b/a Earth Circle Organics  
355 Crown Point Circle, Suite D  
Grass Valley, CA 95945

Current CEO or President  
Whole Foods Market California, Inc.  
555 Bowie Street  
Austin, TX 78703-4644

On May 10, 2016, I served the following documents: **NOTICE OF VIOLATION CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(I)** on the following parties by uploading the foregoing documents at the webpage listed below:

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Ste. 2000  
P.O. Box 70550  
Oakland, CA 94612-0550  
<https://oag.ca.gov/prop65/add-60-day-notice>

On May 10, 2016, I served the following documents: **NOTICE OF VIOLATION CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto. As to those parties listed by mailing address only, I effected service 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 with the U.S. Postal Service with the postage fully prepaid for delivery by Priority Mail. As to those parties having an e-mail address listed, I effected service by transmitting the document via electronic transmission to the e-mail address listed.

Executed under penalty of perjury pursuant to the laws of the State of California on May 10, 2016.

  
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Robert B. Hancock

### Service List

District Attorney, Alameda County 1225 Fallon St., Rm. 900 Oakland, CA 94612	District Attorney, Lake County 255 N. Forbes St. Lakeport, CA 95453	District Attorney, Riverside County 3072 Orange St. Riverside, CA 92501 <a href="mailto:Prop65@alameda.org">Prop65@alameda.org</a>	District Attorney, Sonoma County 600 Administration Dr., Rm. 212J Santa Rosa, CA 95403 <a href="mailto:ibones@sonoma-county.ca.gov">ibones@sonoma-county.ca.gov</a>
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Lassen County 220 S. Lassen St., Ste. 8 Susanville, CA 96130	District Attorney, Sacramento County 901 "G" St. Sacramento, CA 95814	District Attorney, Stanislaus County 832 12th St., Ste. 300 Modesto, CA 95353
District Attorney, Amador County 708 Court St., #202 Jackson, CA 95642	District Attorney, Los Angeles County 210 W. Temple St., Ste. 1800 Los Angeles, CA 90012	District Attorney, San Benito County 419 Fourth St., 2nd Fl. Hollister, CA 95023	District Attorney, Sutter County 446 Second St. Yuba City, CA 95991
District Attorney, Butte County 25 County Center Dr. Oroville, CA 95965	District Attorney, Madera County 209 West Yosemite Ave. Madera, CA 93637	District Attorney, San Bernardino County 316 N. Mountain View Ave. San Bernardino, CA 92415	District Attorney, Tehama County P.O. Box 519 Red Bluff, CA 96080
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Marin County 3501 Civic Center Dr., Rm. 130 San Rafael, CA 94903	District Attorney, San Diego County 330 W. Broadway, Rm. 1300 San Diego, CA 92101	District Attorney, Trinity County P.O. Box 310 Weaverville, CA 96093
District Attorney, Colusa County 346 Fifth St. Ste. 101 Colusa, CA 95932	District Attorney, Mariposa County P.O. Box 730 Mariposa, CA 95338	District Attorney, San Francisco County 850 Bryant St., Rm. 322 San Francisco, CA 94103	District Attorney, Tulare County 221 S. Mooney Ave., Rm. 224 Visalia, CA 93291 <a href="mailto:Prop65@tulare.ca.gov">Prop65@tulare.ca.gov</a>
District Attorney, Contra Costa County 900 Ward St. Martinez, CA 94553 <a href="mailto:sgracsim@contracostada.org">sgracsim@contracostada.org</a>	District Attorney, Mendocino County P.O. Box 1000 Ukiah, CA 95482	District Attorney, San Joaquin County P.O. Box 990 Stockton, CA 95201	District Attorney, Tuolumne County 423 N. Washington St. Sonora, CA 95370
District Attorney, Del Norte County 450 H St., Ste. 171 Crescent City, CA 95531	District Attorney, Merced County 2222 M St. Merced, CA 95340	District Attorney, San Luis Obispo County 1035 Palm St. Rm. 450 San Luis Obispo, CA 93408	District Attorney, Ventura County 800 S. Victoria Ave. Ventura, CA 93009 <a href="mailto:casey@ventura.ca.gov">casey@ventura.ca.gov</a>
District Attorney, El Dorado County 515 Main St. Placerville, CA 95667	District Attorney, Modoc County 204 S Court St., Rm. 202 Alturas, CA 96101-4020	District Attorney, San Mateo County 400 County Ctr., 3rd Fl. Redwood City, CA 94063	District Attorney, Yolo County 301 2nd St. Woodland, CA 95695 <a href="mailto:prop65@yolo.ca.gov">prop65@yolo.ca.gov</a>
District Attorney, Fresno County 2220 Tulare St., #1000 Fresno, CA 93721	District Attorney, Mono County P.O. Box 617 Bridgeport, CA 93517	District Attorney, Santa Barbara County 1112 Santa Barbara St. Santa Barbara, CA 93101	District Attorney, Yuba County 215 Fifth St., Ste. 152 Marysville, CA 95901
District Attorney, Glenn County P.O. Box 430 Willows, CA 95988	District Attorney, Monterey County P.O. Box 1131 Salinas, CA 93902 <a href="mailto:Prop65@monterey.ca.gov">Prop65@monterey.ca.gov</a>	District Attorney, Santa Clara County 70 West Hedding St. San Jose, CA 95110 <a href="mailto:FPUL@siliconvalley.gov">FPUL@siliconvalley.gov</a>	Los Angeles City Attorney's Office City Hall East 200 N. Main St., Rm. 800 Los Angeles, CA 90012
District Attorney, Humboldt County 825 5th St. Eureka, CA 95501	District Attorney, Napa County 931 Parkway Mall Napa, CA 94559 <a href="mailto:CEPT@countyofnapa.org">CEPT@countyofnapa.org</a>	District Attorney, Santa Cruz County 701 Ocean St., Rm. 200 Santa Cruz, CA 95060	Office of the City Attorney City of Sacramento 915 I St., 4th Fl. Sacramento, CA 95814
District Attorney, Imperial County 940 West Main St., Ste. 102 El Centre, CA 92243	District Attorney, Nevada County 201 Commercial St. Nevada City, CA 95959	District Attorney, Shasta County 1355 West St. Redding, CA 96001	San Diego City Attorney's Office 1200 3rd Ave., Ste. 1620 San Diego, CA 92101
District Attorney, Inyo County 230 W. Line St. Bishop, CA 93514	District Attorney, Orange County 401 Civic Center Dr. West Santa Ana, CA 92701	District Attorney, Sierra County PO Box 457 Downsville, CA 95936	San Francisco City Attorney's Office City Hall, Rm. 234 1 Dr. Carlton B Goodlett Place San Francisco, CA 94102
District Attorney, Kern County 1215 Truxtun Ave. Bakersfield, CA 93301	District Attorney, Placer County 10810 Justice Center Dr., Ste. 240 Roseville, CA 95678	District Attorney, Siskiyou County P.O. Box 986 Yreka, CA 96097	San Jose City Attorney's Office 200 E. Santa Clara St., 16th Fl. San Jose, CA 95113
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Plumas County 520 Main St., Rm. 404 Quincy, CA 95971	District Attorney, Solano County 675 Texas St., Ste. 4500 Fairfield, CA 94533	