

## NOTICE OF VIOLATION

### California Safe Drinking Water and Toxic Enforcement Act

#### Acrylamide in Fried or Baked Potato Based Snack Foods

July 27, 2016

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, California, (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 identified on the attached Exhibit 1.
- Time Period of Exposure: The violations have been occurring since at least July 27, 2013, and are ongoing.
- 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 Involved: The name of the listed chemical involved in these violations is acrylamide. Exposures to acrylamide occur from consumption of the products identified in this Notice.
- Type of Product: The specific type of product causing these violations is fried or baked potato based snack foods (hereinafter, "Snack Foods"). Potatoes can be found in the products in various forms, including but not limited to sliced potatoes, dehydrated potatoes, potato flour, potato flakes, and potato starch. Non-exclusive examples of this specific type of product are identified on the attached Exhibit 1. With respect to Amazon.com, Inc., the type of product causing these violations is limited to Snack Foods sold by The French's Food Company, LLC. With respect to CVS Pharmacy, Inc., the type of product causing these violations is limited to Snack Foods sold under the Gold Emblem and Gold Emblem Abound brands. With respect to Gelson's Markets, the type of product causing these violations is limited to Snack Foods sold by Good Health Natural Products, Inc. With respect to Wal-Mart Stores, Inc., the type of product causing these violations is limited to Snack Foods sold by Utz Quality Foods, Inc. With respect to Walmart.com USA LLC, the type of product causing these violations is limited to Snack Foods sold by Con-Agra Foods, Inc.

- Description of Exposure: This Notice addresses consumer exposures to acrylamide. Consumption of the products identified in this Notice results in human exposures to acrylamide. The products contain acrylamide, which is formed during the manufacturing process when the products are cooked at high temperatures. The primary route of exposure for the violations is direct ingestion when consumers eat the products. 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 hazards of acrylamide.

**Resolution of Noticed Claims:**

Based on the allegations set forth in this Notice, CEH intends to file a citizen enforcement lawsuit against each alleged violator unless such violator agrees 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 acrylamide 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 alleged violator 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.

**Preservation of Relevant Evidence:**

This Notice also serves as a demand that each alleged violator preserve and maintain all relevant evidence, including all electronic documents and data, pending resolution of this matter. Such relevant evidence includes but is not limited to all documents relating to the presence or potential presence of acrylamide in Snack Foods; purchase and sales information for such products; efforts to comply with Proposition 65 with respect to such products; communications with any person relating to the presence or potential presence of acrylamide in such products; and representative exemplars of each unit of any such products sold by each alleged violator in the year preceding this Notice.

Please direct any inquiries regarding this Notice to CEH's counsel Howard Hirsch at Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117, (415) 913-7800, hhirsch at lexlawgroup.com.

**EXHIBIT 1**  
**July 27, 2016 Notice of Violation**  
**Acrylamide in Fried or Baked Potato Based Snack Foods**

Names and Addresses of Responsible Parties	Non-Exclusive Examples of the Products	Further Limitation on Type of Product
<p><b>Amazon.com, Inc.</b>            410 Terry Avenue N            Seattle, WA 98109</p>	<p>French's Potato Sticks            Original Flavor            SKU No.            0-41500-21005-6            ASIN: B004LGBJKE</p>	<p>Sold by The French's Food Company, LLC</p>
<p><b>ConAgra Foods, Inc.</b>            11 ConAgra Drive, 11-260            Omaha, NE 68102</p>	<p>Andy Capp's Cheddar Fries            SKU No.            0-26200-47181-5</p>	<p>n/a</p>
<p><b>CVS Pharmacy, Inc.</b>            One CVS Drive            Woonsocket, RI 02895</p>	<p>Gold Emblem Abound            Veggie Chips            Item No. 919417            SKU No.            0-50428-52234-9</p>	<p>Gold Emblem and            Gold Emblem Abound            brands</p>
<p><b>The French's Food Company, LLC</b>            399 Interpace Parkway            Parsippany, NJ 07054</p>	<p>French's Potato Sticks            Original Flavor            SKU No.            0-41500-21005-6            ASIN: B004LGBJKE</p>	<p>n/a</p>
<p><b>Gelson's Markets</b>            13833 Freeway Drive            Santa Fe Springs, CA 90670</p>	<p>Good Health            Veggie Chips in Sea Salt            SKU No.            7-55355-00515-5</p>	<p>Sold by Good Health            Natural Products, Inc.</p>
<p><b>Good Health Natural Products, Inc.</b>            115 Pomona Drive            Greensboro, NC 27407</p>	<p>Good Health            Veggie Chips in Sea Salt            SKU No.            7-55355-00515-5</p>	<p>n/a</p>
<p><b>Utz Quality Foods, Inc.</b>            900 High Street            Hanover, PA 17331</p>	<p>Utz Original Potato Stix            SKU No.            0-41780-07084-5</p>	<p>n/a</p>
<p><b>Wal-Mart Stores, Inc.</b>            702 SW 8<sup>th</sup> Street            Bentonville, AR 72716</p>	<p>Utz Original Potato Stix            SKU No.            0-41780-07084-5</p>	<p>Sold by            Utz Quality Foods, Inc.</p>

**Walmart.com USA LLC**  
850 Cherry Avenue  
San Bruno, CA 94066

Andy Capp's Cheddar Fries  
SKU No.  
0-26200-47181-5

Sold by ConAgra Foods, Inc.

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

I, Howard Hirsch, 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.

July 27, 2016



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Howard Hirsch  
Attorney for the 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 cfisher@lexlawgroup.com.

On July 27, 2016, 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 11:53 A.m. on July 27, 2016:

Stacey Grassini, Deputy District Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
[sgrassini@contracostada.org](mailto:sgrassini@contracostada.org)

Michelle Latimer, Program Coordinator  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
[mlatimer@co.lassen.ca.us](mailto:mlatimer@co.lassen.ca.us)

Yeng Dang  
Supervising Deputy District Attorney  
Santa Clara County  
70 West Hedding Street, West Wing  
San Jose, CA 95110  
[epu@da.sccgov.org](mailto:epu@da.sccgov.org)

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

Stephan R. Passalacqua, District Attorney  
Sonoma County  
600 Administration Drive, Rm. 212J  
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[jbarnes@sonoma-county.org](mailto:jbarnes@sonoma-county.org)

Phillip J. Cline, District Attorney  
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221 S. Mooney Avenue, Rm. 224  
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[Prop65@co.tulare.ca.us](mailto:Prop65@co.tulare.ca.us)

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4075 Main Street  
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Monterey, CA 93940  
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Anne Marie Schubert, District Attorney  
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Tori Verber Salazar, District Attorney  
San Joaquin County  
222 E. Weber Avenue, Room 202  
Stockton, CA 95202  
[DAConsumer.Environmental@sjcda.org](mailto:DAConsumer.Environmental@sjcda.org)

Eric J. Dobroth, Deputy District Attorney  
San Luis Obispo County  
County Government Center Annex, 4th Floor  
San Luis Obispo, CA 93408  
[edobroth@co.slo.ca.us](mailto:edobroth@co.slo.ca.us)

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 July 27, 2016, at San Francisco, California.

Signed:   
Casey Fisher

## SERVICE LIST

District Attorney of Alameda County  
1225 Fallon Street, Rm. 900  
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240  
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San Bernardino, CA 92415

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San Diego, CA 92101

District Attorney of San Mateo  
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Redwood City, CA 94063

District Attorney of Santa Cruz  
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701 Ocean Street, Rm. 200  
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District Attorney of Santa  
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1112 Santa Barbara Street  
Santa Barbara, CA 93101

District Attorney of Shasta  
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Yreka, CA 96097



District Attorney of Solano County  
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Jeffrey Bezos, President\*  
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Seattle, WA 98109

District Attorney of Stanislaus County  
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Sean M. Connolly, CEO\*  
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Woonsocket, RI 02895

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President\*  
The French's Food Company, LLC  
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Parsippany, NJ 07054

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Weaverville, CA 96093

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District Attorney of Yuba County  
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Los Angeles, CA 90012

Dylan Lissette, President\*  
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Hanover, PA 17331

San Diego City Attorney's Office  
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San Diego, CA 92101

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Bentonville, AR 72716

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

President\*  
Walmart.com USA LLC  
850 Cherry Avenue  
San Bruno, CA 94066

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