NOTICE OF VIOLATION

California Safe Drinking Water
and Toxic Enforcement Act

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

September 30, 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 September 30, 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 or sweet potato based snack foods ("Snack Foods"). Potatoes or sweet potatoes can be found in the products in various forms, including but not limited to sliced potatoes, dehydrated potatoes, potato flour, potato flakes, potato starch, sliced sweet potatoes, sweet potato flour, and sweet potato powder. Non-exclusive examples of this specific type of product are identified on the attached Exhibit 1. With respect to Big Lots, Inc. and Big Lots Stores, Inc., the type of product causing these violations is limited to Snack Foods sold by BFY Brands, Inc., Medora Snacks, LLC and Snack Innovations Inc. and Snack Foods sold under the Fresh Finds brand. With respect to Save Mart Supermarkets, the type of product causing these violations is limited to Snack Foods sold by Late July Snacks LLC. With respect to Sunflower Farmers Markets, LLC, the type of product causing these violations is limited to Snack Foods sold by Live Better Brands LLC, FoodShouldTasteGood, Inc. and General Mills, Inc.
- Description of Exposure: This Notice addresses consumer exposures to acrylamide. Consumption of the products subject to 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 variety 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
September 30, 2016 Notice of Violation
Acrylamide in Fried or Baked Potato or Sweet Potato Based Snack Foods

Names and Addresses of Responsible Parties	Further Limitation on Type of Product	Non-Exclusive Examples of the Products
BFY Brands, Inc. 79 Industrial Place Middletown, NY 10940 **Medora Snacks, LLC** 79 Industrial Place Middletown, NY 10940	n/a	Pop Crinkles Popped Potato Crinkles in Sour Cream & Onion SKU No. 8-10607-02022-2
Big Lots, Inc. 300 Phillipi Road Columbus, OH 43228 **Big Lots Stores, Inc.** 300 Phillipi Road Columbus, OH 43228	Sold by BFY Brands, Inc., Medora Snacks, LLC and Snack Innovations Inc. and sold under the Fresh Finds brand	Gourmet Basics Smart Fries Air Popped Potato Sticks in Original KC Barbeque SKU No. 8-53762-00250-4
		Pop Crinkles Popped Potato Crinkles in Sour Cream & Onion SKU No. 8-10607-02022-2
		Fresh Finds All Natural Sweet Potato Chips SKU No. 7-85654-00040-7
		Fresh Finds Veggie Straws SKU No. 0-41101-51708-0
		Fresh Finds Veggie Chips SKU No. 0-41101-51709-7
FoodShouldTasteGood, Inc. Number One General Mills Blvd. Minneapolis, MN 55426 **General Mills, Inc.** Number One General Mills Blvd. Minneapolis, MN 55426	n/a	Food Should Taste Good Sweet Potato Tortilla Chips SKU No. 0-21908-81267-0

Late July Snacks LLC 15 Channel Center Street Suite 105 Boston, MA 02210	n/a	Late July Snacks How Sweet Potato It Is Multigrain Tortilla Chips SKU No. 8-90444-00087-8
Live Better Brands LLC 800 Washington Ave. North Suite 207 Minneapolis, MN 55401	n/a	Way Better Snacks Sweet Potato Whole Grain Tortilla Chips SKU No. 8-55564-00302-4
Save Mart Supermarkets 1800 Standiford Avenue Modesto, CA 95350	Sold by Late July Snacks LLC**	Late July Snacks How Sweet Potato It Is Multigrain Tortilla Chips SKU No. 8-90444-00087-8
Snack Innovations Inc. 67 35th Street Brooklyn, NY 11232	n/a	Gourmet Basics Smart Fries Air Popped Potato Sticks in Original KC Barbeque SKU No. 8-53762-00250-4
Sunflower Farmers Markets, LLC 5455 East High Street Suite 111 Phoenix, AZ 85054	Sold by Live Better Brands LLC, FoodShouldTasteGood, Inc. and General Mills, Inc.	Way Better Snacks Sweet Potato Whole Grain Tortilla Chips SKU No. 8-55564-00302-4
		Food Should Taste Good Sweet Potato Tortilla Chips SKU No. 0-21908-81267-0

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.

September 30, 2016

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 aklompus@lexlawgroup.com.

On September 30, 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 ____:____ .m. on September 30, 2016:

Stacey Grassini, Deputy District Attorney
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San Luis Obispo, CA 93408
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 September 30, 2016, at San Francisco, California.

Signed:_____
Adriana Klompus

SERVICE LIST

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1225 Fallon Street, Rm. 900
Oakland, CA 94612

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P.O. Box 248
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708 Court Street, Ste. 202
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25 County Center Drive
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City Hall, Room 234
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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
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