

NOTICE OF VIOLATION

California Safe Drinking Water and Toxic Enforcement Act

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

October 28, 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 October 28, 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 Albeco, Inc., the type of product causing these violations is limited to Snack Foods sold by Bountiful Larder Inc. With respect to Daiso California LLC, the type of product causing these violations is limited to Snack Foods sold by Calbee America Incorporated, Calbee North America, LLC and Koikeya Co., Ltd. With respect to Galleria Market, LP and Galleria Market/Northridge, LP, the type of product causing these violations is limited to Snack Foods sold by Nongshim America, Inc. and Paldo Co., Ltd. With respect to The Kroger Co. and Vitacost.com, Inc., the type of product causing these violations is limited to Snack Foods sold by Bodacious Food Company, Tyrrells Potato Crisps Limited and Tyrrells Inc. With respect to Raley's, the type of product causing these violations is limited to Snack Foods

sold under the Raley's brand. With respect to Safeway, Inc., the type of product causing these violations is limited to Snack Foods sold by Simply 7 Snacks, LLC. With respect to Sunflower Farmers Markets, LLC, the type of product causing these violations is limited to Snack Foods sold under the Sprouts brand. With respect to Target Corporation, the type of product causing these violations is limited to Snack Foods sold by Kellogg USA Inc. and Kellogg Sales Company.

- 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 lot of each variety of any such products sold by each alleged violator since one year prior to the date of 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
October 28, 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
<p style="text-align: center;">Albeco, Inc. 150 Shoreline Highway Building D Mill Valley, CA 94941</p>	<p style="text-align: center;">Sold by Bountiful Larder Inc.</p>	<p style="text-align: center;">Jackson's Honest Sweet Potato Chips SKU No. 8-56823-00411-0</p>
<p style="text-align: center;">Bodacious Food Company 339 Gennett Drive Jasper, GA 30143</p>	<p style="text-align: center;">n/a</p>	<p style="text-align: center;">Jaxn's Twice Baked Potato Stix, Sea Salt & Pepper SKU No. 7-10342-56010-9</p>
<p style="text-align: center;">Bountiful Larder Inc. 218 Butte Avenue Crested Butte, CO 81224</p>	<p style="text-align: center;">n/a</p>	<p style="text-align: center;">Jackson's Honest Sweet Potato Chips SKU No. 8-56823-00411-0</p>
<p style="text-align: center;">Calbee America Incorporated 2600 Maxwell Way Fairfield, CA 94534</p> <p style="text-align: center;">Calbee North America, LLC 72600 Lewis & Clark Drive Boardman, OR 97818</p>	<p style="text-align: center;">n/a</p>	<p style="text-align: center;">Calbee Honey Butter Potato Chips SKU No. 0-71146-00221-0</p>
<p style="text-align: center;">Chetak San Francisco, L.L.C. 4000 Whipple Road Union City, CA 94587</p>	<p style="text-align: center;">n/a</p>	<p style="text-align: center;">Deep Hot Chips SKU No. 0-11433-02116-6</p>
<p style="text-align: center;">Daiso California LLC 26523 Danti Court Hayward, CA 94545</p>	<p style="text-align: center;">Sold by Calbee America Incorporated, Calbee North America, LLC and Koikeya Co., Ltd.</p>	<p style="text-align: center;">Koikeya Japanese Salt & Seaweed Potato Chips SKU No. 4-901335-001990</p>
		<p style="text-align: center;">Calbee Honey Butter Potato Chips SKU No. 0-71146-00221-0</p>

<p>Flava Puff, LLC 2000 N.W. 150 Avenue Suite 2120 Pembroke, FL 33028</p> <p>Flava Puff, Inc. 2000 N.W. 150 Avenue Suite 2120 Pembroke, FL 33028</p>	n/a	<p>Gold Emblem Abound Veggie Chips Item No. 919417 SKU No. 0-50428-52234-9</p>
<p>Galleria Market, LP 3435 Wilshire Blvd., Ste 1710 Los Angeles, CA 90010</p> <p>Galleria Market/Northridge, LP 3435 Wilshire Blvd., Ste 1710 Los Angeles, CA 90010</p>	<p>Sold by Nongshim America, Inc. and Paldo Co., Ltd.</p>	<p>Paldo Veggie Sticks SKU No. 6-48436-20021-4</p> <p>Nong Shim Postick Snack SKU No. 0-31146-21578-2</p>
<p>Jose Andres Corporation 9311 Burning Tree Road Bethesda, MA 20817</p> <p>Think Food Group LLC 717 D Street, NW 6th Floor Washington, DC 20004</p>	n/a	<p>Jose Andres Potato Chips with Himalayan Pink Salt SKU No. 8-55985-00416-7</p>
<p>Kellogg USA Inc. One Kellogg Square Battle Creek, MI 49016</p> <p>Kellogg Sales Company One Kellogg Square Battle Creek, MI 49016</p>	n/a	<p>Kellogg's Special K Sour Cream & Onion Cracker Chips SKU No. 0-38000-53139-2</p>
<p>The Kroger Co. 1014 Vine Street Cincinnati, OH 45202</p> <p>Vitacost.com, Inc. 1014 Vine Street Cincinnati, OH 45202</p>	<p>Sold by Bodacious Food Company, Tyrrells Potato Crisps Limited and Tyrrells Inc.</p>	<p>Jaxn's Twice Baked Potato Stix, Sea Salt & Pepper SKU No. 7-10342-56010-9</p> <p>Tyrrell's Hand Cooked English Chips Sea Salt & Cracked Black Pepper SKU No. 8-10697-01108-7</p>
<p>Nongshim America, Inc. 12155 6th Street Rancho Cucamonga, CA 91730</p>	n/a	<p>Nong Shim Postick Snack SKU No. 0-31146-21578-2</p>

<p>Raley's 500 West Capital Avenue West Sacramento, CA 95605</p>	<p>Raley's brand</p>	<p>Raley's Purely Made Sweet Potato Tortilla Chips SKU No. 0-46567-02901-6</p>
<p>Safeway, Inc. Tax Division 5918 Stoneridge Mall Road Pleasanton, CA 94588</p>	<p>Sold by Simply 7 Snacks, LLC</p>	<p>Simply 7 Kale Chips with Sea Salt SKU No. 7-64218-65256-6</p>
<p>Simply 7 Snacks, LLC 11300 S. Sam Houston Pkwy West Houston, TX 77031</p>	<p>n/a</p>	<p>Simply 7 Kale Chips with Sea Salt SKU No. 7-64218-65256-6</p>
<p>Target Corporation 1000 Nicollet Mall Minneapolis, MN 55403</p>	<p>Sold by Kellogg USA Inc. and Kellogg Sales Company</p>	<p>Kellogg's Special K Sour Cream & Onion Cracker Chips SKU No. 0-38000-53139-2</p>
<p>Tyrrells Potato Crisps Limited Tyrrells Court Stretford Bridge Leominster Hereford HR6 9DQ England</p> <p>Tyrrells Inc. 71 McMurray Road, Ste 104 Pittsburgh, PA 15241</p>	<p>n/a</p>	<p>Tyrrell's Hand Cooked English Chips Sea Salt & Cracked Black Pepper SKU No. 8-10697-01108-7</p>

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.

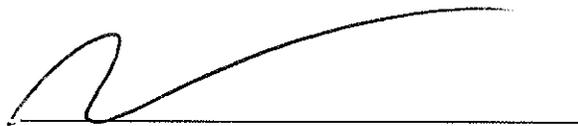
2. I am an attorney with the Lexington Law Group, and I represent the noticing party, the Center for Environmental Health.

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.

October 28, 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 October 28, 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 1:25p.m. on October 28, 2016:

Stacey Grassini, Deputy District Attorney
Contra Costa County
900 Ward Street
Martinez, CA 94553
sgrassini@contracostada.org

Michelle Latimer, Program Coordinator
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Susanville, CA 96130
mlatimer@co.lassen.ca.us

Yeng Dang
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San Jose, CA 95110
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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

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 28, 2016, at San Francisco, California.

Signed: _____



Adriana Klompus

SERVICE LIST

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

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Markleeville, CA 96120

District Attorney of Amador County
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Jackson, CA 95642

District Attorney of Butte County
Administration Building
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Oroville, CA 95965

District Attorney of Calaveras
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891 Mountain Ranch Road
San Andreas, CA 95249

District Attorney of Colusa County
346 Fifth Street, Suite 101
Colusa, CA 95932

District Attorney of Del Norte County
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Crescent City, CA 95531

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Downieville, CA 95936

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Yreka, CA 96097

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District Attorney of Tehama County P.O. Box 519 Red Bluff, CA 96080	President* Bountiful Larder Inc. P.O. Box 2821 Crested Butte, CO 81224	President* Kellogg USA Inc. One Kellogg Square Battle Creek, MI 49016
District Attorney of Trinity County P.O. Box 310 11 Court Street Weaverville, CA 96093	President* Calbee America Incorporated 2600 Maxwell Way Fairfield, CA 94534	President* Kellogg Sales Company One Kellogg Square Battle Creek, MI 49016
District Attorney of Tuolumne County 423 N. Washington Street Sonora, CA 95370	President* Calbee North America, LLC 72600 Lewis & Clark Drive Boardman, OR 97818	W. Rodney McMullen, CEO* The Kroger Co. 1014 Vine Street Cincinnati, OH 45202
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Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Rm. 800 Los Angeles, CA 90012	President* Daiso California LLC 26523 Danti Court Hayward, CA 94545	Michael Teel, CEO* Raley's 500 West Capital Avenue West Sacramento, CA 95605
San Diego City Attorney's Office 1200 Third Avenue, Ste. 1620 San Diego, CA 92101	Brian K. Oblow* Gray Robinson 401 East Jackson Street Suite 2700 Tampa, FL 33602 <i>Counsel for Flava Puff, LLC and Flava Puff, Inc.</i>	Robert L. Edwards, CEO* Safeway, Inc. Tax Division 5918 Stoneridge Mall Road Pleasanton, CA 94588
San Francisco City Attorney's Office City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102	President* Galleria Market, LP 3435 Wilshire Blvd., Ste 1710 Los Angeles, CA 90010	Kawal Oberoi, President* Simply 7 Snacks, LLC 11300 S. Sam Houston Pkwy W. Houston, TX 77031
San Jose City Attorney's Office 200 East Santa Clara Street San Jose, CA 95113		Kawal Oberoi, President* Simply 7 Snacks, LLC P.O. Box 710543 Houston, TX 77271
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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