

NOTICE OF VIOLATION

California Safe Drinking Water and Toxic Enforcement Act

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

November 29, 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 November 29, 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 alleged violator HomeGoods, Inc., the type of product causing these violations is limited to Snack Foods sold by Snack Innovations Inc. With respect to Save Mart Supermarkets, the type of product causing these violations is limited to Snack Foods sold by FGF Brands, Inc. With respect to Whole Foods Market California, Inc. and Mrs. Gooch's Natural Food Markets, Inc., the type of product causing these violations is limited to Snack Foods sold by Bountiful Larder Inc., Boulder Brands USA, Inc., and Milton's Baking Company, LLC.
- 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
November 29, 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
Boulder Brands USA, Inc. 1600 Pearl Street, Ste 300 Boulder, CO 80302	n/a	Earth Balance Vegan Cheddar Flavor Kettle Chips SKU No. 0-33776-08036-5
FGF Brands, Inc. 1295 Ormont Drive Toronto, Ontario M9L 2W6 Canada	n/a	Stonefire Authentic Flatbreads Naan Crisps in Everything SKU No. 8-76680-00964-5
HomeGoods, Inc. 770 Cochituate Road Corptax J5S Framingham, MA 01701	Sold by Snack Innovations Inc.	Smart Fries Air Popped Potato Sticks in Classic Sea Salt SKU No. 8-53762-00249-8 Item No. S051314
Milton's Baking Company, LLC 5875 Avenida Encinas Carlsbad, CA 92008	n/a	Milton's Craft Bakers Gluten Free Crispy Sea Salt Baked Crackers SKU No. 6-06541-80302-7
NatureBox, Inc. 100 Redwood City Pkwy, 2 nd Floor Redwood City, CA 94065	n/a	NatureBox Sour Cream & Onion Straws SKU No. 8-58590-00573-4
Save Mart Supermarkets 1800 Standiford Avenue Modesto, CA 95350	Sold by FGF Brands, Inc.	Stonefire Authentic Flatbreads Naan Crisps in Everything SKU No. 8-76680-00964-5

<p>Whole Foods Market California, Inc. 550 Bowie Street Austin, TX 78703</p> <p>Mrs. Gooch's Natural Food Markets, Inc. 550 Bowie Street Austin, TX 78703</p>	<p>Sold by Bountiful Larder Inc., Boulder Brands USA, Inc., and Milton's Baking Company, LLC</p>	<p>Jackson's Honest Sweet Potato Chips SKU No. 8-56823-00411-0</p>
		<p>Milton's Craft Bakers Gluten Free Crispy Sea Salt Baked Crackers SKU No. 6-06541-80302-7</p>
		<p>Earth Balance Vegan Cheddar Flavor Kettle Chips SKU No. 0-33776-08036-5</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.

November 29, 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 November 29, 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 10:367 m. on November 29, 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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220 S. Lassen Street
Susanville, CA 96130
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Santa Clara County
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Prop65DA@co.monterey.ca.us

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Sacramento, CA 95814
Prop65@sacda.org

Tori Verber Salazar, District Attorney
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222 E. Weber Avenue, Room 202
Stockton, CA 95202
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

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 November 29, 2016, at San Francisco, California.

Signed: 

Adriana Klompus

SERVICE LIST

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

District Attorney of Alpine County
P.O. Box 248
Markleeville, CA 96120

District Attorney of Amador County
708 Court Street, Ste. 202
Jackson, CA 95642

District Attorney of Butte County
Administration Building
25 County Center Drive
Oroville, CA 95965

District Attorney of Calaveras
County
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
450 H Street, Ste. 171
Crescent City, CA 95531

District Attorney of El Dorado
County
515 Main Street
Placerville, CA 95667

District Attorney of Fresno County
2220 Tulare Street, Ste. 1000
Fresno, CA 93721

District Attorney of Glenn County
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District Attorney of Humboldt County
825 5th Street
Eureka, CA 95501

District Attorney of Imperial County
939 Main Street, Ste. 102
El Centro, CA 92243

District Attorney of Inyo County
P.O. Drawer D
Independence, CA 93526

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1215 Truxtun Avenue
Bakersfield, CA 93301

District Attorney of Kings County
1400 West Lacey Blvd.
Hanford, CA 93230

District Attorney of Lake County
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Lakeport, CA 95453

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Los Angeles, CA 90012-3210

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District Attorney of Modoc County
204 S. Court Street, Rm. 202
Alturas, CA 96101-4020

District Attorney of Mono County
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Bridgeport, CA 93546

District Attorney of Nevada County
201 Commercial Street
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401 Civic Center Drive West
Santa Ana, CA 92701

District Attorney of Placer County
10810 Justice Center Drive, Ste.
240
Roseville, CA 95678

District Attorney of Plumas
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520 Main Street, Rm. 404
Quincy, CA 95971

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Hollister, CA 95023

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San Bernardino, CA 92415

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Santa Cruz, CA 95060

District Attorney of Santa
Barbara County
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Santa Barbara, CA 93101

District Attorney of Shasta
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Redding, CA 96001

District Attorney of Sierra County
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100 Courthouse Sq., 2nd Fl.
Downieville, CA 95936

District Attorney of Siskiyou
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Yreka, CA 96097

District Attorney of Solano County 675 Texas Street, Ste. 4500 Fairfield, CA 94533	President* Boulder Brands USA, Inc. 1600 Pearl Street, Ste 300 Boulder, CO 80302
District Attorney of Stanislaus County 832 12th Street, Ste. 300 Modesto, CA 95354	President* FGF Brands, Inc. 1295 Ormont Drive Toronto, Ontario M9L 2W6 Canada
District Attorney of Sutter County 446 Second Street Yuba City, CA 95991	President* HomeGoods, Inc. 770 Cochuatae Road Corptax J5S Framingham, MA 01701
District Attorney of Tehama County P.O. Box 519 Red Bluff, CA 96080	President* Milton's Baking Company, LLC 5875 Avenida Encinas Carlsbad, CA 92008
District Attorney of Trinity County P.O. Box 310 11 Court Street Weaverville, CA 96093	Gautam Gupta, CEO* NatureBox, Inc. 100 Redwood City Parkway 2 nd Floor Redwood City, CA 94065
District Attorney of Tuolumne County 423 N. Washington Street Sonora, CA 95370	Steve Junqueiro, President* Save Mart Supermarkets 1800 Standiford Avenue Modesto, CA 95350
District Attorney of Yuba County 215 Fifth Street Marysville, CA 95901	Steve Junqueiro, President* Save Mart Supermarkets P.O. Box 4278 Modesto, CA 95352
Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Rm. 800 Los Angeles, CA 90012	President* Whole Foods Market California, Inc. 550 Bowie Street Austin, TX 78703
San Diego City Attorney's Office 1200 Third Avenue, Ste. 1620 San Diego, CA 92101	President* Mrs. Gooch's Natural Food Markets, Inc. 550 Bowie Street Austin, TX 78703
San Francisco City Attorney's Office City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102	
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	