

## NOTICE OF VIOLATION

### California Safe Drinking Water and Toxic Enforcement Act

### Acrylamide in Animal Crackers

March 20, 2017

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 March 20, 2014, 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 animal crackers. Non-exclusive examples of this specific type of product are identified on the attached Exhibit 1. With respect to Costco Wholesale Corporation, the type of product causing these violations is limited to animal crackers sold under the Kirkland Signature brand. With respect to CVS Pharmacy, Inc., the type of product causing these violations is limited to animal crackers sold under the Gold Emblem brand. With respect to Dollar Tree Stores, Inc. and Greenbrier International, Inc., the type of product causing these violations is limited to animal crackers sold by Intermex Foods Corporation or Pagasa, S.A. de C.V. With respect to The Kroger Co. and Vitacost.com, Inc., the type of product causing these violations is limited to animal crackers sold by PANOS Brands, LLC. With respect to Nugget Market, Inc., the type of product causing these violations is limited to animal crackers sold by Fantasy Cookie Corporation or The Weetabix Company, Inc. With respect to Safeway Inc., the type of product causing these violations is limited to animal crackers sold by Kellogg USA Inc. or Kellogg Sales Company. With respect to Vallarta Food Enterprises, Inc., the type of product causing these violations is limited to animal crackers sold by

Interamerican Foods Corporation or Productos Alimenticios La Moderna, S.A de C.V. With respect to Walgreen Co., the type of product causing these violations is limited to animal crackers sold under the Nice! brand.

- 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 animal crackers; 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**  
**March 20, 2017 Notice of Violation**  
**Acrylamide in Animal Crackers**

<b>Names and Addresses of Responsible Parties</b>	<b>Further Limitation on Type of Product</b>	<b>Non-Exclusive Examples of the Products</b>
<p><b>Costco Wholesale Corporation</b>            999 Lake Drive            Issaquah, WA 98027</p>	<p>Sold under Kirkland Signature brand</p>	<p>Kirkland Signature Organic Animal Crackers            Item No. 772756            SKU No.            0-96619-78395-3</p>
<p><b>CVS Pharmacy, Inc.</b>            One CVS Drive            Woonsocket, RI 02895</p>	<p>Sold under Gold Emblem brand</p>	<p>Gold Emblem Animal Crackers            Item No. 452754            SKU No.            0-50428-44848-9</p>
<p><b>Dollar Tree Stores, Inc.</b>            500 Volvo Parkway            Chesapeake, VA 23320</p> <p><b>Greenbrier International, Inc.</b>            500 Volvo Parkway            Chesapeake, VA 23320</p>	<p>Sold by Intermex Foods Corporation or Pagasa, S.A. de C.V.</p>	<p>Pagasa Frosted Animal Cookies in Chocolate &amp; Vanilla            SKU No.            0-70952-00951-2</p>
<p><b>Fantasy Cookie Corporation</b>            12800 Arroyo Street            Sylmar, CA 91342</p>	<p>n/a</p>	<p>Barbara's Snackimals Cookies in Vanilla            SKU No.            0-70617-00162-2</p>
<p><b>Interamerican Foods Corporation</b>            8419 San Gabriel Drive            Laredo, TX 78045</p> <p><b>Productos Alimenticios La Moderna, S.A de C.V.</b>            Leandro Valle No. 404-200            Col. Reforma y FFCC. Nales            C.P. 50070, Toluca            Apdo. Postal 456            Mexico</p>	<p>n/a</p>	<p>La Moderna Animalitos Galletas Cookies            SKU No.            0-38629-00221-1</p>
<p><b>Intermex Foods Corporation</b>            930 Hornblend St., Ste 2            San Diego, CA 92109</p> <p><b>Pagasa, S.A. de C.V.</b>            Av. Jose Gallego Lugo 13240            Tijuana, BC 22450            Mexico</p>	<p>n/a</p>	<p>Pagasa Frosted Animal Cookies in Chocolate &amp; Vanilla            SKU No.            0-70952-00951-2</p>

<p><b>Kellogg USA Inc.</b> One Kellogg Square Battle Creek, MI 49016</p> <p><b>Kellogg Sales Company</b> One Kellogg Square Battle Creek, MI 49016</p>	n/a	<p>Mother's The Original Circus Animal Cookies SKU No. 0-27800-70705-2</p>
<p><b>The Kroger Co.</b> 1014 Vine Street Cincinnati, OH 45202</p> <p><b>Vitacost.com, Inc.</b> 5400 Broken Sound Pkwy NW Suite 500 Boca Raton, FL 33487</p>	Sold by PANOS Brands, LLC	<p>Mi-Del Gluten Free Arrowroot Cookies Item No. DEL 4768910 SKU No. 0-30684-76891-0</p>
<p><b>Nugget Market, Inc.</b> 168 Court Street Woodland, CA 95695</p>	Sold by Fantasy Cookie Corporation or The Weetabix Company, Inc.	<p>Barbara's Snackimals Cookies in Vanilla SKU No. 0-70617-00162-2</p>
<p><b>PANOS Brands, LLC</b> 395 West Passaic St., Ste 240 Rochelle Park, NJ 07662</p>	n/a	<p>Mi-Del Gluten Free Arrowroot Cookies Item No. DEL 4768910 SKU No. 0-30684-76891-0</p>
<p><b>Safeway Inc.</b> 11555 Dublin Canyon Road Pleasanton, CA 94588</p>	Sold by Kellogg USA Inc. or Kellogg Sales Company	<p>Mother's The Original Circus Animal Cookies SKU No. 0-27800-70705-2</p>
<p><b>Vallarta Food Enterprises, Inc.</b> 12881 Bradley Avenue Sylmar, CA 91342</p>	Sold by Interamerican Foods Corporation or Productos Alimenticios La Moderna, S.A de C.V.	<p>La Moderna Animalitos Galletas Cookies SKU No. 0-38629-00221-1</p>
<p><b>Walgreen Co.</b> 200 Wilmot Road Deerfield, IL 60015</p>	Sold under Nice! brand	<p>Nice! Disney Animal Crackers SKU No. 0-49022-83225-1</p>
<p><b>The Weetabix Company, Inc.</b> 300 Nickerson Road Suite 100 Marlborough, MA 01752</p>	n/a	<p>Barbara's Snackimals Cookies in Vanilla SKU No. 0-70617-00162-2</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.

March 20, 2017

  
\_\_\_\_\_  
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](mailto:aklompus@lexlawgroup.com).

On March 20, 2017, 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 2:50 p.m. on March 20, 2017:

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)

Yen 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  
Santa Rosa, CA 95403  
[jbarnes@sonoma-county.org](mailto:jbarnes@sonoma-county.org)

Phillip J. Cline, District Attorney  
Tulare County  
221 S. Mooney Avenue, Rm. 224  
Visalia, CA 93291  
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Paul E. Zellerbach, District Attorney  
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4075 Main Street  
Riverside, CA 92501  
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Gregory Alker, Assistant District Attorney  
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732 Brannan Street  
San Francisco, CA 94103  
[gregory.alker@sfgov.org](mailto:gregory.alker@sfgov.org)

Dije Ndreu, Deputy District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
[Prop65DA@co.monterey.ca.us](mailto:Prop65DA@co.monterey.ca.us)

Anne Marie Schubert, District Attorney  
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Sacramento, CA 95814  
[Prop65@sacda.org](mailto:Prop65@sacda.org)

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 March 20, 2017, 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 Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney of Placer County 10810 Justice Center Drive, Ste. 240 Roseville, CA 95678
District Attorney of Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney of Kings County 1400 West Lacey Blvd. Hanford, CA 93230	District Attorney of Plumas County 520 Main Street, Rm. 404 Quincy, CA 95971
District Attorney of Amador County 708 Court Street, Ste. 202 Jackson, CA 95642	District Attorney of Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney of San Benito County 419 Fourth Street, 2 <sup>nd</sup> Fl. Hollister, CA 95023
District Attorney of Butte County Administration Building 25 County Center Drive Oroville, CA 95965	District Attorney of Los Angeles County 210 W. Temple Street, Ste. 1800 Los Angeles, CA 90012-3210	District Attorney of San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415
District Attorney of Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney of Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney of San Diego County 330 West Broadway, Ste. 1300 San Diego, CA 92101
District Attorney of Colusa County 346 Fifth Street, Suite 101 Colusa, CA 95932	District Attorney of Marin County 3501 Civic Center Drive, Rm. 130 San Rafael, CA 94903	District Attorney of San Mateo County 400 County Center, 3 <sup>rd</sup> Fl. Redwood City, CA 94063
District Attorney of Del Norte County 450 H Street, Ste. 171 Crescent City, CA 95531	District Attorney of Mariposa County P.O. Box 730 Mariposa, CA 95338	District Attorney of Santa Cruz County 701 Ocean Street, Rm. 200 Santa Cruz, CA 95060
District Attorney of El Dorado County 515 Main Street Placerville, CA 95667	District Attorney of Mendocino County P.O. Box 1000 Ukiah, CA 95482	District Attorney of Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101
District Attorney of Fresno County 2220 Tulare Street, Ste. 1000 Fresno, CA 93721	District Attorney of Merced County 2222 "M" Street Merced, CA 95340	District Attorney of Shasta County 1355 West Street Redding, CA 96001
District Attorney of Glenn County P.O. Box 430 Willows, CA 95988	District Attorney of Modoc County 204 S. Court Street, Rm. 202 Alturas, CA 96101-4020	District Attorney of Sierra County Courthouse 100 Courthouse Sq., 2 <sup>nd</sup> Fl. Downieville, CA 95936
District Attorney of Humboldt County 825 5th Street Eureka, CA 95501	District Attorney of Mono County P.O. Box 617 Bridgeport, CA 93546	District Attorney of Siskiyou County P.O. Box 986 Yreka, CA 96097
District Attorney of Imperial County 939 Main Street, Ste. 102 El Centro, CA 92243	District Attorney of Nevada County 201 Commercial Street Nevada City, CA 95959	
District Attorney of Inyo County P.O. Drawer D Independence, CA 93526	District Attorney of Orange County 401 Civic Center Drive West Santa Ana, CA 92701	



District Attorney of Solano County 675 Texas Street, Ste. 4500 Fairfield, CA 94533	W. Craig Jelinek, CEO* Costco Wholesale Corporation P.O. Box 35005 Seattle, WA 98124	President* Kellogg USA Inc. One Kellogg Square Battle Creek, MI 49016
District Attorney of Stanislaus County 832 12th Street, Ste. 300 Modesto, CA 95354	W. Craig Jelinek, CEO* Costco Wholesale Corporation 999 Lake Drive Issaquah, WA 98027	President* Kellogg Sales Company One Kellogg Square Battle Creek, MI 49016
District Attorney of Sutter County 446 Second Street Yuba City, CA 95991	President* CVS Pharmacy, Inc. One CVS Drive Woonsocket, RI 02895	W. Rodney McMullen, CEO* The Kroger Co. 1014 Vine Street Cincinnati, OH 45202
District Attorney of Tehama County P.O. Box 519 Red Bluff, CA 96080	President* Dollar Tree Stores, Inc. 500 Volvo Parkway Chesapeake, VA 23320	Eric Stille, President* Nugget Market, Inc. 168 Court Street Woodland, CA 95695
District Attorney of Trinity County P.O. Box 310 11 Court Street Weaverville, CA 96093	President* Greenbrier International, Inc. 500 Volvo Parkway Chesapeake, VA 23320	President* Pagasa, S.A. de C.V. Av. Jose Gallego Lugo 13240 Tijuana, BC 22450 Mexico
District Attorney of Tuolumne County 423 N. Washington Street Sonora, CA 95370	Joseph Semder, President* Fantasy Cookie Corporation 12800 Arroyo Street Sylmar, CA 91342	President* PANOS Brands, LLC 395 West Passaic St., Ste 240 Rochelle Park, NJ 07662
District Attorney of Yuba County 215 Fifth Street Marysville, CA 95901	President* Interamerican Foods Corporation 8419 San Gabriel Drive Laredo, TX 78045	Robert L. Edwards, CEO* Safeway Inc. Tax Division 5918 Stoneridge Mall Road Pleasanton, CA 94588
Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Rm. 800 Los Angeles, CA 90012	President* Productos Alimenticios La Moderna, S.A de C.V. Leandro Valle No. 404-200 Col. Reforma y FFCC. Nales C.P. 50070, Toluca Apdo. Postal 456 Mexico	Robert L. Edwards, CEO* Safeway Inc. 11555 Dublin Canyon Road Pleasanton, CA 94588
San Diego City Attorney's Office 1200 Third Avenue, Ste. 1620 San Diego, CA 92101	President* Intermex Foods Corporation 930 Hornblend St., Ste 2 San Diego, CA 92109	Enrique Gonzalez, Jr., President* Vallarta Food Enterprises, Inc. 12881 Bradley Avenue Sylmar, CA 91342
San Francisco City Attorney's Office City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102	President* Intermex Foods Corporation 517 Emerson Avenue Calexico, CA 92231	Brian Helman, President* Vitacost.com, Inc. 5400 Broken Sound Pkwy NW Suite 500 Boca Raton, FL 33487
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		

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