

April 7, 2017

VIA CERTIFIED MAIL

Ekone Oyster Company
c/o Nick H. Jambor, Governor and
Registered Agent
33 Holtz Road
South Bend, Washington 98586

VIA ELECTRONIC FILING

State of California Department of Justice
Office of the Attorney General
Proposition 65 Enforcement Reporting
Filing link: oag.ca.gov/prop65

VIA U.S. MAIL and EMAIL

District Attorneys of All California Counties and
Select City Attorneys
(See Attached - Certificate of Service)

Notice of Violations of
California Health & Safety Code Section 25249.5 et seq.

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

We represent The Chemical Toxin Working Group, Inc., a California non-profit corporation ("CTWG"), an organization dedicated to reducing the amount of chemical toxins in consumer products, the promotion of human health, environmental safety, and improvement of worker and consumer safety. David Steinman created CTWG to effectuate his commitments as an environmentalist, journalist, consumer health advocate, publisher and author. His major books include "Diet for a Poisoned Planet" (1990, 2007); "The Safe Shopper's Bible" (1995); "Living Healthy in a Toxic World" (1996); and "Safe Trip to Eden: Ten Steps to Save the Planet Earth from Global Warming Meltdown" (2007), along with his many publications as the publisher of the "Healthy Living Magazine" and its associated websites and periodicals.

Through this Notice of Violation (this "Notice"), CTWG seeks to reduce and/or eliminate exposures to cadmium ingested by consumers from smoked oysters produced and sold by Ekone Oyster Company, among other retailers.

This Notice constitutes written notification that Ekone Oyster Company (the "Noticed Party") has violated the warning requirements of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (codified at California Health & Safety Code §25249.5, *et seq.*). The product(s) subject to this Notice of Violation (the "specified

product(s)”) and the chemical in the specified product(s) identified as exceeding allowable levels are the following:

- 1. Ekone Oyster Co. Smoked Oysters Teriyaki Style – Cadmium;**
- 2. Ekone Oyster Co. Smoked Oysters Habanero Hots – Cadmium;**
- 3. Ekone Oyster Co. Smoked Oysters Barbeque Flavor – Cadmium;**
- 4. Ekone Oyster Co. Smoked Oysters Lemon Pepper – Cadmium; and**
- 5. Ekone Oyster Co. Smoked Oysters Original Flavor – Cadmium.**

The Noticed Party has manufactured, marketed, distributed and/or sold the specified product(s) which have exposed and continue to expose numerous individuals within California to cadmium. This chemical was listed pursuant to Proposition 65 as a chemical known to the State of California to cause developmental toxicity and reproductive toxicity on May 1, 1997 and as a chemical known to cause cancer on October 1, 1987.

With respect to the specified product(s) listed above, the violation: commenced on the latter of the date that the specified product(s) were first offered for sale in California or the date upon which California law codified the allowable level of the relevant chemical surpassed by the specified product(s); has continued every day since the relevant date the violation commenced; and will continue every day henceforth until lead is removed from the specified product(s), reduced to allowable levels, or until a “clear and reasonable” warning is provided to consumers by the Noticed Party in accordance with the law. The primary route of exposure has been through ingestion but may have also occurred through inhalation and/or dermal contact.

Proposition 65 requires that a “clear and reasonable” warning be provided prior to exposure to certain listed chemicals. The Noticed Party is in violation of Proposition 65 because the Noticed Party has failed to provide a warning to consumers that they are being exposed to cadmium. While in the course of doing business, the Noticed Party is “knowingly and intentionally” exposing consumers to cadmium without first providing a “clear and reasonable” warning. See Cal. Health and Safety Code § 25249.6. The method of warning should be a warning that appears on the product(s)’ label. See Cal. Code Regs. tit. 27, § 25603.1, subd. (a). The Noticed Party has not provided any Proposition 65 warnings on the specified product(s)’ label or any other appropriate warnings that persons handling, ingesting and/or otherwise using the specified product(s) are being exposed to cadmium.

Proposition 65 requires that notice and intent to sue be provided to a violator 60-days before a suit is filed in connection therewith. With this Notice, CTWG gives written notice of the alleged violation to the Noticed Party and the appropriate governmental authorities. This Notice covers all violations of Proposition 65 that are currently known to the noticing party from information now available as specifically related to the above-described and named smoked oysters sold through Notice Party, and other retailers and/or distributors. CTWG is continuing its investigation that may reveal further violations.

Pursuant to Title 27, C.C.R. § 25903(b), a copy of "The Safe Drinking Water and Toxic Enforcement act of 1986 (Proposition 65): A Summary" is attached hereto for reference by the Noticed Party, and is referenced as Appendix "A" (provided to Noticed Party only).

Pursuant to Title 11, C.C.R. § 3100, a "Certificate of Merit" is attached hereto.

CTWG is interested in a prompt resolution of this matter with an enforceable written agreement by the Noticed Party to (1) eliminate or reduce cadmium to an allowable level in, or provide appropriate warning on the label of, the specified product(s); and (2) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures and expensive and time-consuming litigation.

In keeping with its public interest mission and to expeditiously rectify these ongoing violations of California law, CTWG is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation. Please direct all communications regarding this Notice to my office on behalf of CTWG.

If you have any questions, please contact my office at your earliest convenience. Thank you for your time and consideration with respect to this urgent matter.

Sincerely,
KHANSARI LAW CORP., APC



Andre A. Khansari, Esq.
(Attachments)

Attachments:

1. Certificate of Merit;
2. Certificate of Service;
3. Additional Supporting Information for Certificate of Merit (to Attorney General only);
4. Appendix "A" – "The Safe Drinking Water and Toxic Enforcement act of 1986 (Proposition 65): A Summary" (to noticed party only)

Cc: The Chemical Toxin Working Group, Inc. (via email only)

CERTIFICATE OF MERIT

**Re: The Chemical Toxin Working Group Inc.'s Notice of Proposition 65
Violations by Ekone Oyster Company**

I, Andre A. Khansari, hereby declare:

1. This Certificate of Merit (this "Certificate") accompanies the attached Notice of Violation dated April 7, 2017 (the "NOV") in which it is alleged that the party identified in the NOV ("alleged violator") has violated California Health and Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party The Chemical Toxin Working Group, Inc. The NOV alleges that the alleged violator has exposed persons in California to the listed chemical that is the subject of this Certificate. Please refer to the NOV for additional details regarding the product name and alleged violations.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the subject of this Certificate. I have reviewed the laboratory testing results for the chemical subject to the NOV and relied on these results. The testing was conducted by a reputable testing laboratory, and by experienced scientists. The facts, studies and other data derived through this investigation overwhelmingly demonstrate that the alleged violator exposes persons to the listed chemical that is the subject of this Certificate.
4. Based on the information obtained through these consultants and on other information in my possession, I believe there is sufficient evidence that the listed product in the NOV exposes people to unlawfully high levels of the specified chemical. Furthermore, 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 that the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
5. The copy of this Certificate served on the California Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & Safety Code Section 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.

Dated: April 7, 2017



Andre A. Khansari
Attorney for The Chemical Toxin Working Group, Inc.

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the County of Los Angeles. I am over the age of eighteen years and not a party to the within entitled action or process. My business address is **11845 W. Olympic Blvd., Suite 1000, Los Angeles, California 90064.**

On April 7, 2017, I served the following documents:

- (i) Notice of Violation by Ekone Oyster Company, for Violation of California Health & Safety Code Section 25249.5 et seq.;**
- (ii) Certificate of Merit; and**
- (iii) "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary"**

on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party below, and depositing it at a United States Postal Service Office in Los Angeles, California for delivery by Certified Mail:

Ekone Oyster Company
c/o Nick H. Jambor, Governor and
Registered Agent
33 Holtz Road
South Bend, WA 98586

On April 7, 2017, I served the following documents:

- (i) Notice of Violation by Ekone Oyster Company, for Violation of California Health & Safety Code Section 25249.5 et seq.,**
- (ii) Certificate of Merit, and**
- (iii) Additional Information and Supporting Documentation Required by Title 11, C.C.R. §3102**

on the following party by filing electronically a true and correct copy thereof as permitted through the website of the California Office of the Attorney General via link at oag.ca.gov/prop65:

State of California Department of Justice
Office of the Attorney General


On April 7, 2017, I served the following documents:

- (i) Notice of Violation by Ekone Oyster Company, for Violation of California Health & Safety Code Section 25249.5 et seq.; and**
- (ii) Certificate of Merit**

on each of the parties on the service list attached hereto (see attached "**Service List**") by placing a true and correct copy thereof in a sealed envelope, addressed to each of the District Attorney and City Attorney offices listed on the attached service list, and depositing it at a United States Postal Service mail box for delivery by First Class Mail, except for the Contra Costa County District Attorney, Lassen County District Attorney, Riverside County District Attorney, Sacramento County District Attorney, San Francisco County District Attorney, Napa County District Attorney, San Joaquin County District Attorney, San Luis Obispo County District Attorney, Santa Clara County District Attorney, Sonoma County District Attorney, Tulare County District Attorney, Ventura County District Attorney, Monterey County District Attorney, and Yolo County District Attorney, which have requested electronic service only via the following email addresses, respectively (as listed on the Service List): sgrassini@contracostada.org; mlatimer@co.lassen.ca.us; prop65@rivcoda.org; prop65@sacda.org; Gregory.alker@sfgov.org; cepd@countyofnapa.org;

daconsumer.environmental@sjcda.org; edobroth@co.slo.ca.us; epu@da.sccgov.org; jbarnes@sonoma-county.org; prop65@co.tulare.ca.us; daspecialops@ventura.org; Prop65DA@co.monterey.ca.us; and cfepd@yolocounty.org.

I, Andre A. Khansari, declare under penalty of perjury that the foregoing is true and correct.
Executed on April 7, 2017 at Los Angeles, California



Andre A. Khansari

SERVICE LIST

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DISTRICT ATTORNEY ALAMEDA COUNTY 1225 FALLON STREET, SUITE 900 OAKLAND, CA 94612	DISTRICT ATTORNEY KERN COUNTY 1215 TRUXTUN AVENUE BAKERSFIELD, CA 93301	DISTRICT ATTORNEY NEVADA COUNTY 201 COMMERCIAL STREET NEVADA CITY, CA 95959
DISTRICT ATTORNEY ALPINE COUNTY P.O. BOX 248 MARKLEEVILLE, CA 96120	DISTRICT ATTORNEY KINGS COUNTY 400 WEST LACEY BLVD. HANFORD, CA 93230	DISTRICT ATTORNEY ORANGE COUNTY 401 WEST CIVIC CENTER DR. SANTA ANA, CA 92701
DISTRICT ATTORNEY AMADOR COUNTY 708 COURT STREET, SUITE 202 JACKSON, CA 95642	DISTRICT ATTORNEY LAKE COUNTY 255 N. FORBES STREET LAKEPORT, CA 95453	DISTRICT ATTORNEY PLACER COUNTY 10810 JUSTICE CENTER DRIVE, STE. 240 ROSEVILLE, CA 95678
DISTRICT ATTORNEY BUTTE COUNTY 25 COUNTY CENTER DRIVE, STE 245 OROVILLE, CA 95965	DISTRICT ATTORNEY LASSEN COUNTY 220 SOUTH LASSEN STREET, SUITE 8 SUSANVILLE, CA 96130 mlatimer@co.lassen.ca.us	DISTRICT ATTORNEY PLUMAS COUNTY 520 MAIN STREET, ROOM 404 QUINCY, CA 95911
DISTRICT ATTORNEY CALAVERAS COUNTY 891 MOUNTAIN RANCH ROAD SAN ANDREAS, CA 95249	DISTRICT ATTORNEY LOS ANGELES COUNTY 210 WEST TEMPLE STREET, STE 18000 LOS ANGELES, CA 90012	DISTRICT ATTORNEY RIVERSIDE COUNTY 3072 ORANGE STREET RIVERSIDE, CA 92501 Prop65@rivcoda.org
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DISTRICT ATTORNEY DEL NORTE COUNTY 450 H STREET SUITE 171 CRESCENT CITY, CA 95531	DISTRICT ATTORNEY MARIPOSA COUNTY POST OFFICE BOX 730 MARIPOSA, CA 95338	DISTRICT ATTORNEY SAN BERNARDINO COUNTY 316 N. MOUNTAIN VIEW AVENUE SAN BERNARDINO, CA 92415
DISTRICT ATTORNEY EL DORADO COUNTY 515 MAIN STREET PLACERVILLE, CA 95667	DISTRICT ATTORNEY MENDOCINO COUNTY P. O. BOX 1000 UKIAH, CA 95482	DISTRICT ATTORNEY SAN DIEGO COUNTY 330 WEST BROADWAY, SUITE 1300 SAN DIEGO, CA 92101
DISTRICT ATTORNEY FRESNO COUNTY 2220 TULARE STREET, SUITE 1000 FRESNO, CA 93721	DISTRICT ATTORNEY MERCED COUNTY 550 W. MAIN STREET MERCED, CA 95340	DISTRICT ATTORNEY SAN FRANCISCO COUNTY 732 BRANNAN STREET SAN FRANCISCO, CA 94103 Gregory.alker@sfgov.org

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DISTRICT ATTORNEY HUMBOLDT COUNTY 525 5TH STREET 4TH FLOOR EUREKA, CA 95501	DISTRICT ATTORNEY SANTA BARBARA COUNTY 1112 SANTA BARBARA STREET SANTA BARBARA, CA 93101	DISTRICT ATTORNEY TEHAMA COUNTY P.O. BOX 519 RED BLUFF CA 96080
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SERVICE LIST

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301 Second Street
WOODLAND, CA 95695
cfepd@yolocounty.org**

**OAKLAND CITY ATTORNEY
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OAKLAND, CA 94612**