



August 11, 2017

**ATTORNEY GENERAL COPY: CONTAINS OFFICIAL
INFORMATION PER EVIDENCE CODE § 1040**

**NOTICE OF VIOLATION OF
CALIFORNIA HEALTH & SAFETY CODE § 25249.5 ET SEQ.**

Attorney General Xavier Becerra
c/o Proposition 65 Coordinator
Office of the Attorney General
P.O. Box 70550
Oakland, CA 94612-0550

Re: Notice of Violation of California Health & Safety Code §25249.5 *et seq.*

Dear Attorney General Becerra:

As You Sow (“AYS”) is a 501(c)(3) non-profit corporation dedicated to, among other causes, toxics reduction, the promotion of and improvement of human health, the improvement of worker and consumer rights, environmental education and the protection of the environment, and corporate accountability. AYS is based in Oakland, California, and was incorporated in 1992 under the laws of the State of California.

AYS has documented violations of California’s Safe Drinking Water & Toxic Enforcement Act of 1986 (“Proposition 65”), codified at Health & Safety Code section 25249.5 *et seq.* This letter serves to provide AYS’ notification of these violations to the public enforcement agencies. Pursuant to section 25249.7(d) of the statute, AYS intends to bring an enforcement action sixty days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

A summary of the statute and its implementing regulations, which was prepared by the lead agency designated under the statute, is enclosed with the notices served upon the violators. The specific details of the violations that are the subject of this notice are provided below.

Alleged violators. The names of the violators covered by this notice are:

- Divine Chocolates, Ltd.
- Divine Chocolates, Inc.
- Manufacture Cluizel
- Chocolat Michel Cluizel

- Mondelez International
- Navitas, LLC
- Mars Incorporated
- Eurospecialities Foods B.V.
- Valrhona, Inc.
- Guittard Chocolate Company
- Barry Callebaut USA, LLC
- TCHO Ventures, Inc.
- Raley's
- Sur La Table, Inc.
- Sears Holdings Corporation
- Sprouts Farmers Market, Inc.
- Whole Foods Market, Inc.
- Save Mart Supermarkets

Chemicals. These violations involve exposures to lead and/or cadmium from the products listed below. The State of California has officially listed lead and cadmium as chemicals known to cause birth defects or reproductive harm. *See* Chemicals Known to the State to Cause Cancer or Reproductive Toxicity, available at http://oehha.ca.gov/prop65/prop65_list/Newlist.html.

Consumer products. The products that are the subject of this notice are:

Any chocolate, cocoa, or cacao products including chocolate pieces, callets, bars, nibs, liquers, and confections that contain lead and/or cadmium and are, at any time, manufactured, distributed, or sold by the alleged violators, including but not limited to the following:

- Divine 70% Dark Chocolate Mini Eggs which is manufactured, distributed and/or sold in California by Divine Chocolates, Ltd., Divine Chocolates, Inc., and/or Whole Foods Market, Inc. [Lead]
- Divine 85% Dark Chocolate which is manufactured, distributed and/or sold in California by Divine Chocolates, Ltd., Divine Chocolates, Inc., and/or Whole Foods Market, Inc. [Lead]
- Michel Cluizel Noir Infini 99% which is manufactured, distributed and/or sold in California by Manufacture Cluizel and/or Chocolat Michel Cluizel [Lead and Cadmium]
- Toblerone of Switzerland Dark Chocolate with Honey and Almond Nougat which is manufactured, distributed and/or sold in California by Mondelez International and/or Whole Foods Market, Inc. [Lead]

- Enjoy Life Eat Freely boomCHOCOboom Bar which is manufactured, distributed and/or sold in California by Mondelez International and/or Whole Foods Market, Inc. [Lead]
- Navitas Organic's Organic Cacao Nibs which is manufactured, distributed and/or sold in California by Navitas, LLC and/or Whole Foods Market, Inc. [Cadmium]
- Dark Chocolate M&Ms which is manufactured, distributed and/or sold in California by Mars Incorporated and/or Sears Holdings Corporation [Lead]
- Valrhona Poudre de Cacao which is manufactured, distributed and/or sold in California by Eurospecialities Foods B.V., Valrhona, Inc., and/or Sur La Table, Inc. [Lead and Cadmium]
- Guittard's Clair De Lune Bittersweet Chocolate which is manufactured, distributed and/or sold in California by Guittard Chocolate Company and/or Raley's [Lead and Cadmium]
- Dark Chocolate Extra Bitter Callets, 70.4% Cacao which is manufactured, distributed and/or sold in California by Barry Callebaut USA, LLC [Lead]
- Kumabo 80.1% Cocoa Callets which is manufactured, distributed and/or sold in California by Barry Callebaut USA, LLC [Lead]
- 80% Kumabo Dark Chocolate, Unsweetened which is manufactured, distributed and/or sold in California by Barry Callebaut USA, LLC [Lead]
- TCHO Dark Chocolate Ghana, 70% Cacao which is manufactured, distributed and/or sold in California by TCHO Ventures, Inc. and/or Whole Foods Market, Inc. [Lead and Cadmium]
- TCHO Extra Dark 81% Cacao, 70% Cacao which is manufactured, distributed and/or sold in California by TCHO Ventures, Inc. and/or Whole Foods Market, Inc. [Lead and Cadmium]

Route of exposure. Use of the products identified in this notice result in human exposures to lead and/or cadmium. The route of exposure is ingestion. No clear and reasonable warning is provided with the products regarding the reproductive hazards of lead.

Duration of violation. These ongoing violations have occurred on every day since at least August 11, 2016, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are removed from the products.

Pursuant to Title 11, Cal. Code Regs. section 3100, a certificate of merit is attached hereto.

In keeping with its public interest mission and to expeditiously rectify this ongoing violation of California law, AYS is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation. You may communicate directly with AYS to discuss an early resolution of this matter by contacting:

Danielle Fugere
President
As You Sow
1611 Telegraph Ave., Ste. 1450
Oakland, CA 94612
Tel: (510) 735-8141
Email: dfugere@asyousow.org

Sincerely,


Danielle Fugere

CERTIFICATE OF MERIT

(for As You Sow's Notice of Proposition 65 Violation on Divine Chocolates, Ltd.; Divine Chocolates, Inc.; Manufacture Cluizel; Chocolat Michel Cluizel; Mondelez International; Navitas, LLC; Mars Incorporated; Eurospecialities Foods B.V.; Valrhona, Inc.; Guittard Chocolate Company; Barry Callebaut USA, LLC; TCHO Ventures, Inc.; Raley's; Sur La Table, Inc.; Sears Holdings Corporation; [REDACTED] Sprouts Farmers Market, Inc.; Whole Foods Market, Inc.; Save Mart Supermarkets)

I, Danielle Fugere, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the parties in the notice have violated section 25249.6 of the Health and Safety Code by failing to provide clear and reasonable warnings.
2. I am in-house counsel and President of the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding exposure to the listed chemical that is the subject of the action.
4. Based on the information obtained through those consultations, and on all 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 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 of Merit served on the Attorney General has attached to it to it factual information sufficient to establish the basis for this certificate, including the information identified in section 25249.7(h)(2) of the Health and Safety Code, 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: August 11, 2017



Danielle Fugere

Enclosure (For Attorney General Copy only)

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States and over the age of 18 years. My business address is: 1611 Telegraph Ave., Ste. 1450, Oakland, CA 94612.

On August 11, 2017, I served the following documents:

- Notice of Violation of California Health & Safety Code section 25249.5 et seq.
- Certificate of Merit
- “The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary”

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

Grant F. Reid
President & Chief Executive Officer
Mars Incorporated
6885 Elm St.
Mc Lean, VA 22101

Tom Ellenbroek
Managing Director
Eurospecialities Foods B.V.
Vondelstraat 89
1054 GM Amsterdam Noord-Holland
The Netherlands

Edward Lampert
Chairman & Chief Executive Officer
Sears Holdings Corporation
3333 Beverly Rd # Dc-250b
Hoffman Estates, IL 60179-0001

Christophe Henry
Chief Executive Officer
Valrhona, Inc.
222 Water St
Brooklyn, NY 11201

Sophi Tranchell
Chief Executive Officer
Divine Chocolates, Ltd.
4 Gainsford Street
London SE1 2NE London
England

Diane Neal
Chief Executive Officer
Sur La Table, Inc.
6100 4th Ave S Ste 500
Seattle, WA 98108-3219

Divine Chocolates, Inc.
804 E St Se Ste 2
Washington, DC 20003-2842

Kenneth Givich
Chairman
Guittard Chocolate Company
10 Guittard Rd.
Burlingame, CA 94010

Irene Rosenfeld
Chairman & Chief Executive Officer
Mondelez International
3 Parkway N Ste 300
Deerfield, IL 60015-2565
David Johnson
President & Chief Executive Officer

Michael Teel
Chief Executive Officer
Raley's
500 W Capitol Ave
West Sacramento, CA 95605-2696

Barry Callebaut U.S.A., LLC
600 W Chicago Ave Ste 860
Chicago, IL 60654-2530

Michel Albert Joseph Cluizel
President
Manufacture Cluizel
Avenue De Conches 27240
Mesnils-Sur-Iton Eure France

Michel Cluizel
Managing Member
Chocolat Michel Cluizel
199 Madison Ave
New York, NY 10016-4305



Andrew Burke
Chief Executive Officer
TCHO Ventures, Inc.
3100 San Pablo Ave
Berkeley, CA 94702

J.Z. Adelman
Chief Executive Officer
Navitas, LLC
15 Pamaron Way
Novato, CA 94949

John Elstrott
Chairman
Whole Foods Market, Inc.
550 Bowie St
Austin, TX 78703-4644

On August 11, 2017, I served the following documents:

- Notice of Violation of California Health & Safety Code section 25249.5 et seq.
- Certificate of Merit, including Supporting Documentation Required by Title 11, C.C.R. § 3102

on the Attorney General of the State of California by electronic service of the Attorney General's Proposition 65 60 Day Notice Filing system.

On August 11, 2017, I served the following documents:

- Notice of Violation of California Health & Safety Code section 25249.5 et seq.
- Certificate of Merit

on each of the parties on the service list attached hereto either (1) via email, or (2) by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the service list attached hereto, and depositing it at United States Postal Service mail box for delivery by First Class Mail.

Executed on August 11, 2017 at Oakland, California.


Kwan Hong Feoh

The Honorable Nancy E. O'Malley
Alameda County District Attorney
1225 Fallon St., Room 900
Oakland, CA 94612

The Honorable Dwayne Stewart
Glenn County District Attorney
P.O. Box 430
Willows, CA 95988

The Honorable Edward Berberian
Marin County District Attorney
3501 Civic Center Dr., Room 130
San Rafael, CA 94903-4164

The Honorable Michael Atwell
Alpine County District Attorney
17300 Hwy. 89, P.O. Box 248
Markleeville, CA 96120

The Honorable Maggie Fleming
Humboldt County District Attorney
825 Fifth St., 4th Floor
Eureka, CA 95501

The Honorable Thomas K. Cooke
Mariposa County District Attorney
P.O. Box 730
Mariposa, CA 95338

The Honorable Todd D Riebe
Amador County District Attorney
708 Court St., Suite 202
Jackson, CA 95642

The Honorable Gilbert G. Otero
Imperial County District Attorney
940 West Main St., Suite 102
El Centro, CA 92243

The Honorable C. David Eyster
Mendocino County District Attorney
P.O. Box 1000
Ukiah, CA 95482

The Honorable Michael Ramsey
Butte County District Attorney
25 County Center Dr.
Oroville, CA 95965-3370

The Honorable Thomas L. Hardy
Inyo County District Attorney
168 North Edwards
Independence, CA 93526

The Honorable Larry Morse li
Merced County District Attorney
550 West Main Street
Merced, CA 95340

The Honorable Barbara Yook
Calaveras County District Attorney
891 Mountain Ranch Rd.
San Andreas, CA 95249

The Honorable Lisa Green
Kern County District Attorney
1215 Truxtun Ave.
Bakersfield, CA 93301

The Honorable Jordan Funk
Modoc County Interim Dist. Attorney
204 South Court St., Room 202
Alturas, CA 96101-4020

The Honorable Matthew R. Beauchamp
Colusa County District Attorney
346 5th Street, Suite 101
Colusa, CA 95932

The Honorable Keith Fagundes
Kings County District Attorney
1400 West Lacey Blvd.
Hanford, CA 93230

The Honorable Tim Kendall
Mono County District Attorney
P.O. Box 2053
Mammoth Lakes, CA 93546

The Honorable District Attorney
Contra Costa County Dist. Attorney
900 Ward Street
Martinez, CA 94553

The Honorable Donald Anderson
Lake County District Attorney
255 North Forbes St.
Lakeport, CA 95453

The Honorable Dean Flippo
Monterey County District Attorney
P.O. Box 1131
Salinas, CA 93902

The Honorable District Attorney
Del Norte County District Attorney
450 H St., Suite 171
Crescent City, CA 95531

The Honorable Stacey L. Montgomery
Lassen County District Attorney
220 South Lassen St., Suite 8
Susanville, CA 96130

The Honorable Allison Haley
Carithers Building
931 Parkway Mall
Napa, CA 94559

The Honorable Vernon Pierson
El Dorado County District Attorney
515 Main Street
Placerville, CA 95667

The Honorable Jackie Lacey
L A County District Attorney
211 West Temple St. Suite 1200
Los Angeles, CA 90012

The Honorable Clifford Newell
Nevada County District Attorney
201 Commercial St.
Nevada City, CA 95959

The Honorable Lisa Smittcamp
Fresno County District Attorney
2220 Tulare St., Suite 1000
Fresno, CA 93721

The Honorable David Linn
Madera County District Attorney
209 West Yosemite Ave.
Madera, CA 93637

The Honorable Tony Rackauckas
Orange County District Attorney
401 Civic Center Dr. West
Santa Ana, CA 92701

The Honorable R. Scott Owens
Placer County District Attorney
10810 Justice Center Dr., #240
Roseville, CA 95678

The Honorable Stephen M. Wagstaffe
San Mateo County District Attorney
400 County Center, Floor 3
Redwood City, CA 94063

The Honorable Amanda L. Hopper
Sutter County District Attorney
443 Second St., #102
Yuba City, CA 95991

The Honorable David Hollister
Plumas County District Attorney
520 Main St., Room 404
Quincy, CA 95971

The Honorable Joyce E. Dudley
Santa Barbara County Dist. Attorney
1112 Santa Barbara St.
Santa Barbara, CA 93101

The Honorable Gregg Cohen
Tehama County District Attorney
P.O. Box 519
Red Bluff, CA 96080

The Honorable Michael Hestrin
Riverside County District Attorney
3960 Orange St.
Riverside, CA 92501

The Honorable Jeffrey F. Rosen
Santa Clara County Dist. Attorney
70 West Hedding St., West Wing
San Jose, CA 95110

The Honorable Eric Heryford
Trinity County District Attorney
P.O. Box 310
Weaverville, CA 96093

The Honorable Anne Marie Schubert
Sacramento County Dist. Attorney
901 G Street
Sacramento, CA 95814

The Honorable Jeff Rosell
Santa Cruz County Dist. Attorney
701 Ocean St., Room 200
Santa Cruz, CA 95060

The Honorable Tim Ward
Tulare County District Attorney
221 South Mooney Blvd., Room 224
Visalia, CA 93291

The Honorable Candice Hooper-Mancino
San Benito County District Attorney
419 Fourth Street
Hollister, CA 95023

The Honorable Stephanie A. Bridgett
Shasta County District Attorney
1355 West Street
Redding, CA 96001

The Honorable Laura Krieg
Tuolumne County Dist. Attorney
423 North Washington St.
Sonora, CA 95370

The Honorable Michael Ramos
San Bernardino County
District Attorney
303 West Third St.
San Bernardino, CA 92415

The Honorable Lawrence Allen
Sierra County District Attorney
100 Courthouse Square
Downieville, CA 95936

The Honorable Greg Totten
Ventura County District Attorney
800 South Victoria Ave.
Ventura, CA 93009

The Honorable Summer Stephan
San Diego County District Attorney
330 West Broadway, Suite 1300
San Diego, CA 92101

The Honorable James Kirk Andrus
Siskiyou County District Attorney
P.O. Box 986
Yreka, CA 96097

The Honorable Jeffery Reisig
Yolo County District Attorney
301 Second St.
Woodland, CA 95695

The Honorable George Gascón
San Francisco County
District Attorney
880 Bryant St., 3rd Floor
San Francisco, CA 94103

The Honorable Krishna A. Abrams
Solano County District Attorney
675 Texas St., Suite 4500
Fairfield, CA 94533

The Honorable Patrick Mcgrath
Yuba County District Attorney
215 Fifth St., #152
Marysville, CA 95901

The Honorable Tori Verber Salazar
San Joaquin County Dist. Attorney
P.O. Box 990
Stockton, CA 95202

The Honorable Jill Ravitch
Sonoma County District Attorney
600 Administration Dr., Room 212-J
Santa Rosa, CA 95403

Los Angeles City Attorney's Office
200 North Main St., Floor 8
Los Angeles, CA 90012

The Honorable Dan Dow
San Luis Obispo County
District Attorney
Courthouse Annex, 4th Floor
San Luis Obispo, CA 93408

The Honorable Birgit Fladager
Stanislaus County District Attorney
832 12th St., Suite 300
Modesto, CA 95353

San Diego City Attorney's Office
Civic Center Plaza
1200 Third Ave., Suite 1620
San Diego, CA 92101

San Francisco City Attorney's Office
City Hall, Room 234
San Francisco, CA 94102

San Jose City Attorney's Office
200 East Santa Clara St.
San Jose, CA 95113