



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:

- Nestle USA, Inc.
- Abbott Laboratories
- The Simply Good Foods Company
- Glanbia, PLC

- Thinkthin, LLC
- Quest Nutrition, LLC
- Carlyle Group, LP
- The Nature's Bounty Company
- Met-Rx Substrate Technology, Inc.
- WhiteWave Foods Company
- Lifestyle Evolution, Inc.
- Go Macro, LLC
- Probar, LLC
- Sprouts Farmers Market, Inc.
- Whole Foods Market, Inc.
- Save Mart Supermarkets

Chemicals. These violations involve exposures to lead from the products listed below. The State of California has officially listed lead as a chemical 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 nutrition, snack, meal replacement, or protein bar that contains lead and are, at any time, manufactured, distributed, or sold by **the alleged violators**, including but not limited to the following:

- PowerBar Protein Plus Chocolate Peanut Butter which is manufactured, distributed and/or sold in California by Nestle USA, Inc.
- ZonePerfect Nutrition Bar Dark Chocolate Almond which is manufactured, distributed and/or sold in California by Abbott Laboratories
- Atkins Meal Cookies n' Crème Bar which is manufactured, distributed and/or sold in California by The Simply Good Foods Company
- Atkins Treat Nutty Fudge Brownie Bar which is manufactured, distributed and/or sold in California by The Simply Good Foods Company
- thinkThin High Protein Bar, Chunky Peanut Butter which is manufactured, distributed and/or sold in California by Glanbia, PLC, Thinkthin, LLC, and/or Save Mart Supermarkets

- thinkThin High Protein Bar, Chocolate Fudge which is manufactured, distributed and/or sold in California Glanbia, PLC, Thinkthin, LLC, and/or Save Mart Supermarkets
- thinkThin High Protein Bar, Brownie Crunch which is manufactured, distributed and/or sold in California by Glanbia, PLC, Thinkthin, LLC, and/or Save Mart Supermarkets
- QuestBar Protein Bar, Banana Nut Muffin which is manufactured, distributed and/or sold in California by Quest Nutrition, LLC, Whole Foods Market, Inc., and/or Save Mart Supermarkets
- QuestBar Protein Bar, Chocolate Brownie which is manufactured, distributed and/or sold in California by Quest Nutrition, LLC, Whole Foods Market, Inc., and/or Save Mart Supermarkets
- MET-Rx Protein Plus, Chocolate Chocolate Chunk which is manufactured, distributed and/or sold in California by The Carlyle Group LP, The Nature's Bounty Company, Met-Rx Substrate Technology, Inc., and/or Save Mart Supermarkets
- MET-Rx Protein Plus, Super Cookie Crunch which is manufactured, distributed and/or sold in California by The Carlyle Group LP, The Nature's Bounty Company, Met-Rx Substrate Technology, Inc., and/or Save Mart Supermarkets
- Vega Sport Protein Bar, Chocolate Peanut Butter which is manufactured, distributed and/or sold in California by WhiteWave Foods Company and/or Sprouts Farmers Market, Inc.
- Pure Protein Bar, Chocolate Deluxe which is manufactured, distributed and/or sold in California by Carlyle Group, LP
- NuGo Dark Chocolate Coconut which is manufactured, distributed and/or sold in California by Lifestyle Evolution, Inc. and/or Save Mart Supermarkets
- NuGo Dark Mint Chocolate Chip which is manufactured, distributed and/or sold in California by Lifestyle Evolution, Inc. and/or Save Mart Supermarkets
- NuGo Dark Mocha Chocolate which is manufactured, distributed and/or sold in California by Lifestyle Evolution, Inc. and/or Save Mart Supermarkets
- NuGo Stronger Caramel Pretzel Protein Bar which is manufactured, distributed and/or sold in California by Lifestyle Evolution, Inc. and/or Save Mart Supermarkets
- Go Macro Macrobar Protein Pleasure, Peanut Butter Chocolate Chip which is manufactured, distributed and/or sold in California by Go Macro, LLC

- Go Macro Macrobar Everlasting Joy, Coconut + Almond Butter + Chocolate which is manufactured, distributed and/or sold in California by Go Macro, LLC and/or Sprouts Farmers Market, Inc.
- Pro Bar Meal Chocolate Coconut which is manufactured, distributed and/or sold in California by Probar, LLC and/or Whole Foods Market, Inc.

Route of exposure. Use of the products identified in this notice result in human exposures to lead. 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 Nestle USA, Inc.; Abbott Laboratories; The Simply Good Foods Company; Glanbia, PLC; Thinkthin, LLC; Quest Nutrition, LLC; Carlyle Group, LP; The Nature's Bounty Company; Met-Rx Substrate Technology, Inc.; WhiteWave Foods Company; Lifestyle Evolution, Inc.; Go Macro, LLC; Probar, LLC; 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:

Laurent Freixe
EVP, Zone Americas
Nestle USA, Inc.
800 N Brand Blvd
Glendale, CA 91203-3213

A. Scott Connelly
President
Met-Rx Substrate Technology, Inc.
6111 Broken Sound Pkwy NW
Boca Raton, FL 33487

Miles White
Chairman & Chief Executive
Officer
Abbott Laboratories
100 Abbott Park Rd
Abbott Park, IL 60064-3500

Gregg L. Engles, Chief Executive Officer
WhiteWave Foods Company
1225 17th St., Suite 1000
Denver, CO 80202

Joseph Scalzo
President & Chief Executive Officer
The Simply Good Foods Company
1050 17th St Ste 1500
Denver, CO 80265-2078

David Levine, President
Lifestyle Evolution, Inc.
520 2nd St.
Oakmont, PA 15139

Patsy Ahern, Director
Glanbia, PLC
Glanbia House, Kilkenny Co
Kilkenny Ireland

Jolanta Sonkin, Chief Executive Officer
Go Macro, LLC
415 S Wagoner Ave.
Viola, WI 54664

Michele Kessler, President
Thinkthin, LLC
12211 W Washington Blvd Ste 120
Los Angeles, CA 90066-5519

Robert Piccinini
Chairman
Save Mart Supermarkets
1800 Standiford Ave
Modesto, CA 95350-0180

Thomas Bilyeu, President
Quest Nutrition, LLC
2221 Park Place
El Segundo, CA 90245

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

Daniel D'Aniello
Chairman
The Carlyle Group LP
1001 Pennsylvania Ave NW 220s
Washington, DC 20004-2573

Joseph Fortunato
Chairman
Sprouts Farmers Market, Inc.
5455 E High St Ste 111
Phoenix, AZ 85054-5464

Sandra Horbach
Chairman
The Nature's Bounty Company
2100 Smithtown Ave
Ronkonkoma, NY 11779-7347

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 Teoh