



1611 Telegraph Ave, Suite 1450  
Oakland, CA 94612

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BUILDING A SAFE, JUST, AND SUSTAINABLE WORLD SINCE 1992

**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:

- **WhiteWave Foods Company**
- **Vitamin Shoppe, Inc.**

**Chemicals.** These violations involve exposures to lead and 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](http://oehha.ca.gov/prop65/prop65_list/Newlist.html).

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

Any nutritional, protein, or meal replacement powder or drink that contains lead and cadmium and are, at any time, manufactured, distributed, or sold by the alleged violators, including but not limited to the following:

- Vega One All-In-One Nutritional Shake, Chocolate which is manufactured, distributed and/or sold in California by WhiteWave Foods Company and/or Vitamin Shoppe, Inc.

**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](mailto:dfugere@asyousow.org)

Sincerely,

  
Danielle Fugere

## **CERTIFICATE OF MERIT**

(for As You Sow's Notice of Proposition 65 Violation on  
WhiteWave Foods Company; Vitamin Shoppe, Inc.)

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:

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

Colin Watts  
Chief Executive Officer  
Vitamin Shoppe, Inc.  
300 Harmon Meadow Blvd #2  
Secaucus, NJ 07094-3643

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.

  

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Kwan Hong Teoh