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October 24, 2017

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

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

Dear Public Enforcement Agencies:

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

This Firm and AYS have 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 this Firm’s and AYS’s notification of these violations to the public enforcement agencies. Pursuant to section 25249.7(d) of the statute, this Firm intends to bring an enforcement action on behalf of AYS 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 name of the violators covered by this notice are:

- The Hershey Company

- Blommer Chocolate Co.
- Lindt & Sprungli (North America), Inc. (including Lindt & Sprungli (USA), Inc.; the Ghirardelli Chocolate Company; and Russell Stover Chocolates, LLC)
- Cargill, Inc., on behalf of itself, its affiliates, and subsidiaries
- Nestle USA, Inc.

**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](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, liquors, 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:

- Hershey's Cocoa 100% Cacao Natural Unsweetened, which is manufactured, distributed, and/or sold in California by The Hershey Company and Blommer Chocolate Co. [cadmium] (*also subject of Notice of Violation AG Number 2014-00635*)
- Dagoba Organic Chocolate New Moon Rich Dark Chocolate Bar, which is manufactured, distributed, and/or sold in California by The Hershey Company and Blommer Chocolate Co. [lead and cadmium] (*also subject of Notice of Violation AG Number 2014-01160*)
- Dagoba Organic Chocolate Eclipse Extra Strong Dark Chocolate, which is manufactured, distributed, and/or sold in California by The Hershey Company and Blommer Chocolate Co. [lead and cadmium] (*also subject of Notice of Violation AG Number 2016-00256*)
- Hershey's Special Dark Mildly Sweet Chocolate Bar, which is manufactured, distributed, and/or sold in California by The Hershey Company and Blommer Chocolate Co. [lead] (*also subject of Notice of Violation AG Number 2016-00256*)
- Trader Joe's Single Origin Chocolate Passport 73% Cacao Bar (Tanzania), which is manufactured by Cargill, Inc. and distributed and/or sold in

California [lead and cadmium] (*also subject of Notice of Violation AG Number 2016-00102*)

- Trader Joe's Single Origin Chocolate Passport 70% Cacao Bar (Sao Tome), which is manufactured by Cargill, Inc. and distributed and/or sold in California [lead] (*also subject of Notice of Violation AG Number 2016-00102*)
- Trader Joe's Single Origin Chocolate Passport 70% Cacao Bar (Papua New Guinea), which is manufactured by Cargill, Inc. and distributed and/or sold in California [lead and cadmium] (*also subject of Notice of Violation AG Number 2016-00102*)
- Trader Joe's Single Origin Chocolate Passport 70% Cacao Bar (Dominican Republic), which is manufactured by Cargill, Inc. and distributed and/or sold in California [lead and cadmium] (*also subject of Notice of Violation AG Number 2016-00102*)
- Trader Joe's Single Origin Chocolate Passport 70% Cacao Bar (Venezuela), which is manufactured by Cargill, Inc. and distributed and/or sold in California [lead and cadmium] (*also subject of Notice of Violation AG Number 2016-00102*)
- Trader Joe's Single Origin Chocolate Passport 66% Cacao Bar (Ecuador), which is manufactured by Cargill, Inc. and distributed and/or sold in California [lead and cadmium] (*also subject of Notice of Violation AG Number 2016-00102*)
- Trader Joe's Single Origin Chocolate Passport 60% Cacao Bar (Peru), which is manufactured by Cargill, Inc. and distributed and/or sold in California [lead and cadmium] (*also subject of Notice of Violation AG Number 2016-00102*)
- Lindt Excellence 85% Cocoa Extra Dark Chocolate Bar, which is manufactured, distributed, and/or sold in California by Lindt & Sprungli (North America), Inc. [lead and cadmium] (*also subject of Notice of Violation AG Number 2016-00052*)
- Ghirardelli 100% Cacao Unsweetened Chocolate Baking Bar, which is manufactured, distributed, and/or sold in California by Lindt & Sprungli (North America), Inc. [cadmium] (*also subject of Notice of Violation AG Number 2014-00635*)
- Ghirardelli Chocolate Intense Dark Twilight Delight (72% Cacao) (Bar), which is manufactured, distributed, and/or sold in California by Lindt &

Sprungli (North America), Inc. [cadmium] (*also subject of Notice of Violation AG Number 2016-00256*)

- Nestle Toll House Cocoa (Powder), which is manufactured, distributed, and/or sold in California by Nestle USA, Inc. [lead and cadmium]

**Route of exposure.** Use of the products identified in this notice result in human exposures to lead and cadmium. The route of exposure is ingestion, when consumers consume these products as directed on their labels. No clear and reasonable warning is provided with the products regarding the reproductive hazards of lead and cadmium.

**Duration of violation.** These ongoing violations have occurred on every day since at least October 24, 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 with AYS to discuss an early resolution of this matter by contacting AYS's counsel:

Ellison Folk  
Shute, Mihaly & Weinberger LLP  
396 Hayes Street  
San Francisco, CA 94102  
Phone: 415.552.7272; Fax: 415.552.5816  
Email: folk@smwlaw.com

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Ellison Folk


## CERTIFICATE OF MERIT

**(for As You Sow's Notice of Proposition 65 Violations on The Hershey Company; Blommer Chocolate Co.; Lindt & Sprungli (North America), Inc. [including Lindt & Sprungli (USA), Inc.]; the Ghirardelli Chocolate Company; and Russell Stover Chocolates, LLC]; Cargill, Inc., on behalf of itself, its affiliates, and subsidiaries; and Nestle USA, Inc.)**

I, Ellison Folk, 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 an attorney for 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: 10-24-17

  
\_\_\_\_\_  
Ellison Folk

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, over the age of 18 years, and not a party to the within action. My business address is: 396 Hayes Street, San Francisco, CA 94102.

On October 24, 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 parties 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:

Leslie M. Turner, General Counsel  
The Hershey Company  
c/o Shayon Smith, Legal Department  
100 Crystal A Dr.  
Hershey, PA 17033

Peter Blommer, CEO & President  
Blommer Chocolate Co.  
600 West Kinzie St.  
Chicago, IL 60610

Laura Witte, General Counsel  
Cargill, Inc.  
c/o Kelly McLain, Senior Lawyer  
Cargill Law, Attn: CCNA  
15407 McGinty Rd. West, MS 24  
Wayzata, MN 55391

Jennifer Picenoni, General Counsel  
Lindt & Sprungli (North America), Inc.  
c/o Simon Kehl, Senior Legal Counsel  
4900 Oak St.  
Kansas, City, MO 64112

Daniel Nugent, General Counsel  
Nestle USA, Inc.  
1812 N. Moore St.  
Arlington, VA 22209

On October 24, 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 October 24, 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 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 October 24, 2017, at San Francisco, California.

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Willette Moore

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