



AS YOU SOW

1611 Telegraph Ave, Suite 1450
Oakland, CA 94612

www.asyousow.org
BUILDING A SAFE, JUST, AND SUSTAINABLE WORLD SINCE 1992

June 11, 2018

**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:

- Casa Luker USA
- Cemoi Inc
- Clasen Quality Chocolate
- Savencia Gourmet SAS

- Storck USA

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 chocolate candy; chocolate bars, pieces, chips, beverages, and chocolate-based confections with or without inclusions; cocoa nibs and cocoa powder; chocolate and cacao-based compounds in any form; and other products derived primarily (i.e., in excess of 50%) from cacao 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:

- “Trader Joe’s Cacao Powder” and chocolate “Lovers” bar, which is manufactured, distributed and/or sold in California by Casa Luker USA [cadmium].
- “Cemol Sao Tome 66% Dark Chocolate” chocolate product, which is manufactured, distributed and/or sold in California by Cemol Inc [lead].
- “72 percent Cacao” chocolate product, which is manufactured, distributed and/or sold in California by Clasen Quality Chocolate [cadmium].
- “Valrhona Chocolaterie Kallingo 65%”; “Villars Maitre Chocolatier Noir Pur 64%”; and “La Maison Du Chocolat Couverture Alpaco 66%” chocolate products, which are manufactured, distributed and/or sold in California by Savencia Gourmet SAS [cadmium].
- “Moser Roth Peru 62% Cacao” chocolate product, which is manufactured, distributed and/or sold in California by Storck USA [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 and/or cadmium.

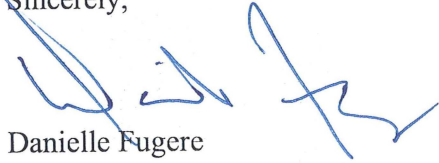
Duration of violation. These ongoing violations have occurred on every day since at least June 11, 2017, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users 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,

A handwritten signature in blue ink, appearing to be 'Danielle Fugere', written over the printed name.

Danielle Fugere

CERTIFICATE OF MERIT

(for As You Sow's Notice of Proposition 65 Violation on Casa Luker USA, Cemoi Inc,
Clasen Quality Chocolate, Savencia Gourmet SAS, and Storck USA)

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: June 11, 2018


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 June 11, 2018, 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:

Camilo Romero
Gerente General
Casa Luker
Calle 13 # 68-98
Bogotá, Columbia

Beau Denker
Vice President
Clasen Quality Chocolate
5126 West Terrace Dr.
Madison, WI 53718

James Kilmer
Casa Luker USA
71 McMurray Blvd., Suite 104
Pittsburg, PA 15241

Lewis D. Gitlin
Legal Counsel
Savencia Gourmet SAS
c/o SB Management Services, Inc.
300 Martin Luther King Blvd., Suite B
Wilmington, DE 19801

Jean-Christophe Radouan
Deputy CEO
Cemol Inc
1557 Spring Garden Ave.
Pittsburgh, PA 15212

Kelly Cook
Vice President
Storck USA
325 N. LaSalle St. Suite 400
Chicago, IL 60654

Jared Sutara
Chris Candies Inc
1557 Spring Garden Ave.
Pittsburgh, PA 15212

Robert L. Falk
Morrison & Foerster LLP
425 Market St., 32nd Floor
San Francisco, CA 94105

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- Certificate of Merit

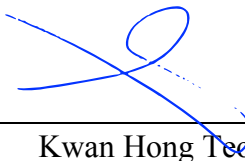
on each of the District Attorneys on the service list attached hereto either (1) by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the service list

attached hereto and depositing it at a United States Postal Service mail box for delivery by First Class Mail, or (2) via electronic service to the email addresses listed. The specific method of delivery is indicated in the service list.

On June 11, 2018, I served the following documents on the Attorney General using the Attorney General's Proposition 65 electronic Notice Filing Form (<https://oag.ca.gov/prop65/add-60-day-notice>):

- 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

Executed on June 11, 2018 at Oakland, California.



Kwan Hong Teoh

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

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

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

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

The Honorable Matthew R. Beauchamp
Colusa County District Attorney
346 Fifth St., Ste. 101
Colusa, CA 95932

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

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

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

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

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

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

The Honorable Thomas L. Hardy
Inyo County District Attorney
P.O. Box Drawer D
Independence, CA 93526

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1215 Truxtun Ave.
Bakersfield, CA 93301

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Kings County District Attorney
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Hanford, CA 93230

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255 North Forbes St.
Lakeport, CA 95453

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Los Angeles County District Attorney
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Los Angeles, CA 90012

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Madera, CA 93637

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3501 Civic Center Dr., Room 130
San Rafael, CA 94903-4164

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

The Honorable C. David Eyster
Mendocino County District Attorney
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Ukiah, CA 95482

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

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

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

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201 Commercial St.
Nevada City, CA 95959

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Placer County District Attorney
10810 Justice Center Dr., #240
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San Bernardino, CA 92415

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Shasta County District Attorney
1355 West Street
Redding, CA 96001

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Sierra County District Attorney
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Downieville, CA 95936

The Honorable J. Kirk Andrus
Siskiyou County District Attorney
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Yreka, CA 96097

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Tuolumne County District Attorney
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Sonora, CA 95370

The Honorable Patrick McGrath
Yuba County District Attorney
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Marysville, CA 95901

The Honorable Nancy E. O'Malley
Alameda County District Attorney
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The Honorable Mark A. Peterson
Contra Costa County District Attorney
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901 G Street
Sacramento, CA 95814
via: Prop65@sacda.org

The Honorable Summer Stephan
San Diego County District Attorney
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San Diego, CA 92101
via: CityAttyCrimProp65@sandiego.gov

The Honorable George Gascón
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The Honorable Tori Verber Salazar
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The Honorable Joyce Dudley
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