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June 18, 2018

To: President or CEO – Safeway, Inc.  
President or CEO – Lucerne Foods, Inc.  
President or CEO – Better Living Brands, LLC  
California Attorney’s Office  
District Attorney’s Office for 58 counties  
City Attorney’s for San Francisco, San Diego, San Jose, and Los Angeles  
(See attached Certificate of Service)

From: Center for Food Safety

**Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.***

Dear Addressees:

This firm represents Center for Food Safety in connection with this Notice of Violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* (“Proposition 65”). Center for Food Safety is a national non-profit public interest and environmental advocacy organization working to protect human health and the environment by curbing the use of harmful food production technologies and by promoting organic and other forms of sustainable agriculture. This letter serves to provide notification of these violations to you and to the public enforcement agencies of Proposition 65.

This letter constitutes notice that the entities listed below have violated and continue to violate provisions of Proposition 65. Specifically, the entities listed below have violated and continue to violate the warning requirement at § 25249.6 of the California Health & Safety Code, which provides that “[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual...”

Violators: The name of the violators covered by this notice that violated Proposition 65 (hereinafter referred to as the “Violators”) are: 1) Safeway, Inc., 2) Lucerne Foods, Inc., and 3) Better Living Brands, LLC.

Listed Chemical: These violations involve exposure to the listed chemical acrylamide. On January 1, 1990, California officially listed acrylamide as a chemical known to the State of California to cause cancer. On February 25, 2011, California officially listed acrylamide as a chemical known to cause reproductive and developmental toxicity.

Consumer Products: The following specific products that are the subject of this notice because are causing exposures in violation of Proposition 65 are:

1. Open Nature Creamy Almond Butter Salted
2. Signature Select Creamy Peanut Butter
3. Signature Select Chunky Peanut Butter
4. Organics No Stir Creamy Organic Peanut Butter Spread
5. Organics No Stir Crunchy Organic Peanut Butter Spread
6. Organics Old Fashioned Crunchy Organic Peanut Butter
7. Organics Old Fashioned Creamy Organic Peanut Butter
8. Signature Select Creamy Peanut Spread Reduced Fat
9. Open Nature Old Fashioned Peanut Butter Crunchy
10. Open Nature Old Fashioned Peanut Butter Creamy

Violation: The alleged Violators knowingly and intentionally exposed and continue to expose consumers within the State of California to acrylamide without providing a Proposition 65 warning. The Violators have manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemical, acrylamide.

Route of Exposure: Use of the products identified in this notice results in human exposures to acrylamide. The primary route of exposure is ingestion.

Duration of Violation: The violations have been occurring since at least June 18, 2017, and are ongoing.

A summary of Proposition 65, prepared by the California Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter sent to the Violators.

Pursuant to California Health & Safety Code § 25249.7(d), Center for Food Safety intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violators agree in an enforceable written agreement to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Consistent with the public

Notice of Violation of Cal. Health & Safety Code §§ 25249.5 *et seq.*


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interest goals of Proposition 65 and my client's objectives in pursuing this notice, Center for Food Safety is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemical and expensive and time consuming litigation.

Adam Keats is a Senior Attorney with Center for Food Safety. Mr. Keats is located at 303 Sacramento St., 2nd Floor, San Francisco, CA 94111, Tel. 415-826-0507. Center for Food Safety has retained my firm in connection with this matter. Please direct all questions concerning this notice to me, Rebecca Davis ([rebecca@lozeaudrury.com](mailto:rebecca@lozeaudrury.com)), Lozeau Drury LLP, 410 12th Street, Suite 250, Oakland, California 94607, (510) 836-4200.

Sincerely,



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Rebecca L. Davis

**Attachments:**

Certificate of Merit

Certificate of Service

OEHHA Summary (to Violators and their Registered Agents for Service of Process only)

Additional Supporting Information for Certificate of Merit (to AG only)

**CERTIFICATE OF MERIT**

**Re: Center for Food Safety's Notice of Proposition 65 Violations by Safeway, Inc., Lucerne Foods, Inc., and Better Living Brands, LLC**

I, Rebecca Davis, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party, Center for Food Safety.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.
4. Based on the information obtained through those consultants and 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(s) will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit, additional factual information sufficient to establish the basis for this certificate has been served on the Attorney General, including the information identified in California Health & Safety Code §25249.7(h)(2), 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 18, 2018

  
\_\_\_\_\_  
Rebecca Davis

## 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 old, and am not a party to the within action. My business address is 410 12th Street, Suite 250, Oakland, California 94607, in Alameda County, where the mailing occurred.

On June 18, 2018, I served the following documents: **(1) NOTICE OF VIOLATIONS OF THE CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; (2) CERTIFICATE OF MERIT; (3) THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY** on the following entities by placing a true and correct copy thereof in a sealed envelope with postage fully prepaid for delivery by Certified Mail, addressed to the entity listed below, and placing the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

Current President or CEO  
Safeway, Inc.  
11555 Dublin Canyon Road  
Pleasanton, CA 94588

CT Corporation System  
(Registered Agent for Service of Process for  
Safeway, Inc.)  
818 West Seventh Street, Suite 930  
Los Angeles, CA 90017

Current President or CEO  
Lucerne Foods, Inc.  
5918 Stoneridge Mall Road  
Pleasanton, CA 94588

CT Corporation System  
(Registered Agent for Service of Process for  
Lucerne Foods, Inc.)  
818 West Seventh Street, Suite 930  
Los Angeles, CA 90017

Current President or CEO  
Better Living Brands, LLC  
P.O. Box 99  
Pleasanton, CA 94566

The Corporation Trust Company  
(Registered Agent for Service of Process for  
Better Living Brands, LLC)  
Corporation Trust Center  
1209 Orange St.  
Wilmington, DE 19801

On June 18, 2018, I served the following documents **(1) NOTICE OF VIOLATIONS OF THE CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; (2) CERTIFICATE OF MERIT; (3) ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE § 25249.7(d)(1)** on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice>:

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Oakland, CA 94612-0550

On June 18, 2018, I served the following documents **(1) NOTICE OF VIOLATIONS OF THE CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.;** **(2) CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to the party listed below:

Stacey Grassini, Deputy District Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
sgrassini@contracostada.org

Gregory Alker, Assistant District Attorney  
San Francisco County  
732 Brannan Street  
San Francisco, CA 94103  
gregory.alker@sfgov.org

Michelle Latimer, Program Coordinator  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
mlatimer@co.lassen.ca.us

Yen Dang, Supervising Deputy District  
Attorney  
Santa Clara County  
70 W Hedding St  
San Jose, CA 95110  
EPU@da.sccgov.org

Dije Ndreu, Deputy District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
Prop65DA@co.monterey.ca.us

Stephan R. Passalacqua, District Attorney  
Sonoma County  
600 Administration Dr.  
Sonoma, CA 95403  
jbarnes@sonoma-county.org

Allison Haley, District Attorney  
Napa County  
931 Parkway Mall  
Napa, CA 94559  
CEPD@countyofnapa.org

Phillip J. Cline, District Attorney  
Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
Prop65@co.tulare.ca.us

Paul E. Zellerbach, District Attorney  
Riverside County  
3072 Orange Street  
Riverside, CA 92501  
Prop65@rivcoda.org

Gregory D. Totten, District Attorney  
Ventura County  
800 S Victoria Ave  
Ventura, CA 93009  
daspecialops@ventura.org

Anne Marie Schubert, District Attorney  
Sacramento County  
901 G Street  
Sacramento, CA 95814  
Prop65@sacda.org

Jeff W. Reisig, District Attorney  
Yolo County  
301 Second Street  
Woodland, CA 95695  
cfepd@yolocounty.org

Christopher Dalbey  
Deputy District Attorney  
Santa Barbara County  
1112 Santa Barbara St.  
Santa Barbara, CA 93101  
DAProp65@co.santa-barbara.ca.us

Nancy O'Malley, District Attorney  
7776 Oakport Street, Suite 650  
Oakland, CA 94621  
CEPDProp65@acgov.org

Kathryn L. Turner, Chief Deputy City  
Attorney  
1200 Third Ave.  
San Diego, CA 92101  
CityAttyCrimProp65@sandiego.gov


Tori Verber Salazar, District Attorney  
222 E. Weber Avenue, Room 202  
Stockton, CA 95202  
DAConsumer.Environmental@sjcda.org

Eric J. Dobroth, Deputy District Attorney  
County Government Center Annex, 4th Floor  
San Luis Obispo, CA 93408  
edobroth@co.slo.ca.us

Jeffrey S. Rosell , District Attorney  
701 Ocean Street  
Santa Cruz , CA 95060  
Prop65DA@santacruzcounty.us

On June 18, 2018, I served the following documents **(1) NOTICE OF VIOLATIONS OF THE CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; (2) 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 with postage fully prepaid for delivery by First Class Mail, addressed to each of the entities on the Service List attached hereto, and placing the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

Executed on June 18, 2018, in Oakland, California.



Daniel Charlier-Smith

## Service List

District Attorney  
Alpine County  
P.O. Box 248  
Markleeville, CA 96120

District Attorney  
Amador County  
708 Court Street  
Jackson, CA 95642

District Attorney  
Butte County  
25 County Center Drive,  
Suite 245  
Oroville, CA 95965

District Attorney  
Calaveras County  
891 Mountain Ranch Road  
San Andreas, CA 95249

District Attorney  
Colusa County  
346 Fifth Street Suite 101  
Colusa, CA 95932

District Attorney  
Del Norte County  
450 H Street, Room 171  
Crescent City, CA 95531

District Attorney  
El Dorado County  
515 Main Street  
Placerville, CA 95667

District Attorney  
Fresno County  
2220 Tulare Street, Suite  
1000 Fresno, CA 93721

District Attorney  
Glenn County  
Post Office Box 430  
Willows, CA 95988

District Attorney  
Humboldt County  
825 5th Street 4th Floor  
Eureka, CA 95501

District Attorney  
Imperial County  
940 West Main St.  
Ste 102  
El Centro, CA 92243

District Attorney  
Inyo County  
230 W. Line Street  
Bishop, CA 93514

District Attorney  
Kern County  
1215 Truxtun Avenue  
Bakersfield, CA 93301

District Attorney  
Kings County  
1400 West Lacey  
Boulevard Hanford, CA  
93230

District Attorney  
Lake County  
255 N. Forbes St.  
Lakeport, CA 95453

District Attorney  
Los Angeles County 210  
West Temple Street  
Suite 18000  
Los Angeles, CA 90012

District Attorney Madera  
County  
209 West Yosemite  
Avenue Madera, CA 93637

District Attorney  
Marin County  
3501 Civic Center Drive  
Room 130  
San Rafael, CA 94903

District Attorney Mariposa  
County  
Post Office Box 730  
Mariposa, CA 95338

District Attorney  
Mendocino County  
Post Office Box 1000  
Ukiah, CA 95482

District Attorney  
Merced County  
550 W. Main Street  
Merced, CA 95340

District Attorney  
Modoc County  
204 S Court Street, Room  
202  
Alturas, CA 96101-4020

District Attorney  
Mono County  
Post Office Box 617  
Bridgeport, CA 93517

District Attorney  
Nevada County  
201 Commercial Street  
Nevada City, CA 95959

District Attorney  
Orange County  
401 W. Civic Center Dr.  
Santa Ana, CA 92701

District Attorney  
Placer County  
10810 Justice Center Dr.  
Suite 240  
Roseville, CA 95678

District Attorney  
Plumas County  
520 Main Street, Room 404  
Quincy, CA 95971

District Attorney  
San Benito County  
419 Fourth Street, 2nd  
Floor Hollister, CA 95023

District Attorney  
San Bernardino County  
316 N. Mountain View  
Avenue San Bernardino,  
CA 92415-0004

District Attorney  
Shasta County  
1355 West Street Redding,  
CA 96001

District Attorney  
Sierra County  
PO Box 457  
Downieville, CA 95936

District Attorney  
Siskiyou County Post  
Office Box 986  
Yreka, CA 96097

District Attorney  
Solano County  
675 Texas St., Ste 4500  
Fairfield, CA 94533

District Attorney  
Stanislaus County  
832 12th Street, Ste 300  
Modesto, CA 95354

District Attorney  
Sutter County  
446 Second Street  
Yuba City, CA 95991

District Attorney  
Tehama County  
Post Office Box 519  
Red Bluff, CA 96080

District Attorney  
Trinity County  
Post Office Box 310  
Weaverville, CA 96093

District Attorney  
Tuolumne County  
423 N. Washington Street  
Sonora, CA 95370

District Attorney  
Yuba County  
215 Fifth Street, Suite 152  
Marysville, CA 95901

Los Angeles City  
Attorney's Office  
City Hall East  
200 N. Main St., Ste. 800  
Los Angeles, CA 90012

San Diego City Attorney's  
Office  
1200 3rd Ave., Ste 1620  
San Diego, CA 92101

San Francisco City  
Attorney's Office  
City Hall, Room 234  
1 Dr Carlton B Goodlett Pl.  
San Francisco, CA 94102

San Jose City Attorney's  
Office  
200 East Santa Clara  
Street, 16th Floor  
San Jose, CA 95113