

# KAWAHITO LAW GROUP APC

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July 3, 2018

## **60-DAY NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET. SEQ. (PROPOSITION 65)**

Dear Alleged Violator(s) and the Appropriate Public Enforcement Agencies:

The Kawahito Law Group APC represents the Center for Advanced Public Awareness, Inc. ("CAPA"), 180 Promenade Circle, Suite 300, Sacramento, California 95834. CAPA is a California a non-profit company acting in the interest of the general public seeking to further, among other causes, the protection of the environment, improving human health, and environmentally sound practices. CAPA has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65" or "Act"), codified at Cal. Health & Safety Code §25249.5 *et seq.* This letter serves to provide CAPA's Notice of these violations. Pursuant to §25249.7(d) of the Act, CAPA intends to file a private enforcement action in the public interest sixty (60) days after effective service of this Notice unless the appropriate public enforcement agencies have commenced and are prosecuting an action to rectify these violations.

**General Information and Summary of Proposition 65.** A copy of a summary of Proposition 65 prepared by the Office of Environmental Health Hazard Assessment is attached to this letter.

**Alleged Violators.** The name of the entity or entities covered by this Notice and who are alleged to be in violation of Proposition 65 (collectively the "Violators") are:

Raley's  
500 W. Capitol Ave.  
West Sacramento, CA 95605

Betty Lou's Inc.  
750 SE Booth Bend Rd.  
Mcminnville, OR 97128

**Consumer Product.** The products ("Products") which are causing an exposure without a warning in violation of Proposition 65, are:

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| <b>Product(s)</b>   | <b>Retailer(s)</b> | <b>Manufacturer(s)/Distributor(s)/<br/>Importer(s)</b> |
|---|--------------------|--|
| Betty Lou's Just Great Stuff-Organic<br>Powdered Peanut Butter Original | Raley's            | Betty Lou's Inc.                                       |

**Listed Chemical and Route of Exposure.** The chemical that is the subject of this Notice is Acrylamide. The consumer exposures at issue result from the use of the Products in accordance with their intended use including the ingestion of the Products. The primary route of exposure is oral ingestion. The types of harm from the chemicals at issue include Developmental Toxicity, Male Reproductive Toxicity, and Cancer.

**Period of Exposure and Violation.** Exposures to Acrylamide from the use of the Products have occurred each day since the products were introduced into the California marketplace, but at a minimum since May 8, 2018. Moreover, these exposures will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the Products. Without proper warnings regarding the toxic effects of exposures to the listed chemical resulting from contact with the Products, California citizens lack the information necessary to make informed decisions on whether and how to eliminate (or reduce) the risk of exposure to the listed chemical from reasonable foreseeable use of the Products.

**Resolution of Noticed Claims.** Consistent with the public interest goals of Proposition 65, CAPA is interested in seeking a constructive resolution to this matter to have the ongoing violations of California law quickly rectified. To that end, CAPA intends to file a private enforcement action as provided for in the Act for the alleged violations by the Violators, unless Violators agree in an enforceable written instrument to: (1) recall the listed Products or undertake best efforts to ensure that the requisite health hazard warnings are provided to those who have received such Products; (2) reformulate the Products so as to eliminate further exposures to the identified chemicals or affix clear and reasonable Proposition 65 warning labels for products sold in the future; and (3) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, and avoid costly and time-consuming litigation.

To the extent you are interested in discussing a potential early resolution of this matter, you may communicate directly with CAPA's attorneys using the below contact information.

**Contact Information.** Please direct all questions or issues concerning this Notice to CAPA's counsel at the following address:

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James Kawahito  
Kawahito Law Group APC  
222 North Pacific Coast Hwy., Suite 2222  
El Segundo, CA 90245  
tel. 310-746-5300  
email [jkawahito@kawahitolaw.com](mailto:jkawahito@kawahitolaw.com)

## Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Violators only)

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

**CERTIFICATE OF MERIT**  
Health and Safety Code Section 25249.7(d)

**Re: Center for Advanced Public Awareness, Inc.'s Notice of Proposition 65  
Violations**

I, James Kawahito, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

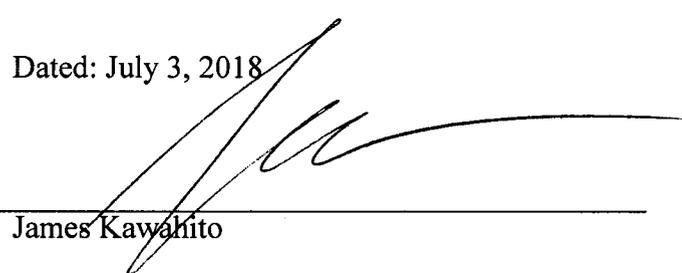
2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience and have assembled evidence attached to the copy for the California Attorney General as Exhibit 1 to this Certificate of Merit regarding the lack of warnings for the listed chemical that is the subject of the notice.

4. Based on the information obtained and on 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 attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2).

Dated: July 3, 2018

  
\_\_\_\_\_  
James Kawahito

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## CERTIFICATE OF SERVICE

I am over the age of 18 and not a party to this case. I am a resident of or employed in the county where the mailing occurred. My business address is 222 North Pacific Coast Hwy., Suite 2222, El Segundo, CA 90245.

On July 3, 2018, I served the following: **1. 60-Day Notice of Intent to Sue Under Health and Safety Code section 25249.6 2. Certificate of Merit; Health and Safety Code Section 25249.7(d) 3. The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65); A Summary** on the alleged Violators listed below via First Class Certified Mail through the United States Postal Service by placing a true and correct copy in a sealed envelope, addressed to the parties listed below and providing such envelope to a United States Postal Service Representative:

Raley's  
Agent for Service of Process  
Helen S. Singmaster  
500 W. Capitol Ave.  
West Sacramento, CA 95605

Betty Lou's Inc.  
750 SE Booth Bend Rd.  
Mcminnville, OR 97128

Betty Lou's Inc.  
Agent for Service of Process  
BH Service Co., Inc.  
805 SW Broadway, Suite 1900  
Portland, OR 97205

On July 3, 2018, I served the following: **1. 60-Day Notice of Intent to Sue Under Health and Safety Code section 25249.6; 2. Certificate of Merit; Health and Safety Code Section 25249.7(d); 3. Certificate of Merit (Attorney General Copy); Factual information sufficient to establish the basis of the certificate of merit**

On the following parties by uploading the foregoing documents at the webpage listed below:

Office of the California Attorney General  
Prop 65 Enforcement

<https://oag.ca.gov/prop65/add-60-day-notice>

On July 3, 2018, I served the following: **1. 60-Day Notice of Intent to Sue Under Health and Safety Code section 25249.6; 2. Certificate of Merit; Health and Safety Code Section 25249.7(d)** to the public enforcers by placing a true and correct copy in a sealed

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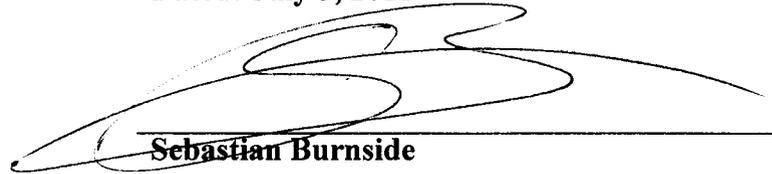
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envelope, with postage fully prepaid with the U.S. Postal Service, addressed to the parties listed on the attached **Service List**.

I declare under penalty of perjury that under the laws of the State of California that the foregoing is true and correct.

**Dated: July 3, 2018**



**Sebastian Burnside**

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## SERVICE LIST

|   |  |   |
|---|--|---|
| Alameda County District Attorney<br>1225 Fallon Street, Room 900<br>Oakland, CA 94612                         | Alpine County District Attorney<br>P.O. Box 248<br>Markleeville, CA 96120  | Amador County District Attorney<br>708 Court Street, #202<br>Jackson, CA 95642  |
| Butte County District Attorney<br>25 County Center Drive, Suite 245<br>Oroville, CA 95965                     | Calaveras County District Attorney<br>891 Mountain Ranch Road<br>San Andreas, CA 95249                             | Colusa County District Attorney<br>346 5th Street, Suite 101<br>Colusa, CA 95932  |
| Contra Costa County District Attorney<br>900 Ward Street<br>Martinez, CA 94553<br>sgrassini@contracostada.org | Del Norte County District Attorney<br>450 H Street, Room 171<br>Crescent City, CA 95531                            | El Dorado County District Attorney<br>515 Main Street<br>Placerville, CA 95667  |
| Fresno County District Attorney<br>2220 Tulare Street, Suite 1000<br>Fresno, CA 93721                         | Glenn County District Attorney<br>P.O. Box 430<br>Willows, CA 95988  | Humboldt County District Attorney<br>525 5 <sup>th</sup> Street, 4 <sup>th</sup> Floor<br>Eureka, CA 95501                                |
| Imperial County District Attorney<br>940 West Main Street, Suite 102<br>El Centro, CA 92243                   | Inyo County District Attorney<br>230 W. Line Street<br>Bishop, CA 93514  | Kern County District Attorney<br>1215 Truxtun Avenue<br>Bakersfield, CA 93301   |
| Kings County District Attorney<br>1400 West Lacey Blvd.<br>Hanford, CA 93230                                  | Lake County District Attorney<br>255 N. Forbes Street<br>Lakeport, CA 95453  | Lassen County District Attorney<br>220 S. Lassen Street<br>Susanville, CA 96130<br>[field_prop65ctacts_title]<br>mlatimer@co.lassen.ca.us |
| Los Angeles County District Attorney<br>210 W. Temple St., 18 <sup>th</sup> Floor<br>Los Angeles, CA 90012    | Madera County District Attorney<br>209 West Yosemite Avenue<br>Madera, CA 93637                                    | Marin County District Attorney<br>3501 Civic Center Drive, Room 130<br>San Rafael, CA 94903   |
| Mariposa County District Attorney<br>P.O. Box 730<br>Mariposa, CA 95338                                       | Mendocino County District Attorney<br>P.O. Box 1000<br>Ukiah, CA 9548  | Merced County District Attorney<br>550 West Main Street<br>Merced, CA 95340   |
| Modoc County District Attorney<br>204 S. Court Street Room 202<br>Alturas, CA 96101                           | Mono County District Attorney<br>P.O. Box 2053<br>Mammoth Lakes, CA 93546  | Monterey County District Attorney<br>1200 Aguajito Road<br>Monterey, CA 93940<br>Prop65DA@co.monterey.ca.us                               |
| Napa County District Attorney<br>931 Parkway Mall<br>Napa, CA 94559<br>CEPD@countyofnapa.org                  | Nevada County District Attorney<br>201 Commercial Street<br>Nevada City, CA 95959                                  | Orange County District Attorney<br>401 Civic Center Drive West<br>Santa Ana, CA 92701   |
| Placer County District Attorney<br>10810 Justice Center Drive<br>Roseville, CA 95678                          | Plumas County District Attorney<br>520 Main Street, Room 404<br>Quincy, CA 95971                                   | Riverside County District Attorney<br>3072 Orange Street<br>Riverside, CA 92501<br>Prop65@rivcoda.org                                     |
| Sacramento County District Attorney<br>901 G Street<br>Sacramento, CA 95814<br>Prop65@sacda.org               | San Benito District Attorney<br>419 4th Street<br>Hollister, CA 95023  | San Bernardino County District Attorney<br>303 W. Third Street<br>San Bernardino, CA 92415  |
| San Diego County District Attorney<br>330 W. Broadway, Suite 1300<br>San Diego, CA 92101                      | San Francisco County District Attorney<br>732 Brannan Street<br>San Francisco, CA 94103<br>gregory.alker@sfgov.org | San Joaquin County District Attorney<br>222 E. Weber Avenue, Room 202<br>Stockton, CA 95202<br>DAConsumer.Environmental@sjcda.org         |

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|---|--|---|
| San Luis Obispo County District Attorney<br>County Government Center Annex,<br>4th Floor<br>San Luis Obispo, CA 93408<br>[field_prop65ctaacts_title]<br>edobroth@co.slo.ca.us | San Mateo County District Attorney<br>400 County Center, Third Floor<br>Redwood City, CA 94063                 | Santa Barbara County District Attorney<br>1112 Santa Barbara Street<br>Santa Barbara, CA 93101                |
| Santa Clara County District Attorney<br>70 W Hedding St<br>San Jose, CA 95110<br>EPU@da.sccgov.org  | Santa Cruz County District Attorney<br>701 Ocean Street, Room 200<br>Santa Cruz, CA 95060                      | Shasta County District Attorney<br>1355 West Street<br>Redding, CA 96001                                      |
| Sierra County District Attorney<br>100 Courthouse Square<br>Downieville, CA 95936   | Siskiyou County District Attorney<br>P.O. Box 986<br>Yreka, CA 96097   | Solano County District Attorney<br>675 Texas Street, Suite 4500<br>Fairfield, CA 94533                        |
| Sonoma County District Attorney<br>600 Administration Dr<br>Sonoma, CA 95403<br>jbarnes@sonoma-county.org   | Stanislaus County District Attorney<br>832 12th Street, Suite 300<br>Modesto, CA 95353                         | Sutter County District Attorney<br>446 Second Street, Suite 102<br>Yuba City, CA 95991                        |
| Tehama County District Attorney<br>P.O. Box 519<br>Red Bluff, CA 96080  | Trinity County District Attorney<br>P.O. Box 310<br>Weaverville, CA 96093                                      | Tulare County District Attorney<br>221 S Mooney Blvd<br>Visalia, CA 95370<br>Prop65@co.tulare.ca.us           |
| Tuolumne County District Attorney<br>423 N. Washington Street<br>Sonora, CA 95370   | Ventura County District Attorney<br>800 S Victoria Ave<br>Ventura, CA 93009<br>daspecialops@ventura.org        | Yolo County District Attorney<br>301 Second Street<br>Woodland, CA 95695<br>cfepd@yolocounty.org              |
| Yuba County District Attorney<br>215 Fifth Street, Suite 152<br>Marysville, CA 95901  | Los Angeles City Attorney's Office<br>City Hall East<br>200 N. Main Street, Suite 800<br>Los Angeles, CA 90012 | San Francisco, City Attorney<br>City Hall, Room 234<br>1 Dr Carlton B Goodlett Pl, San<br>Francisco, CA 94102 |
| San Diego City Attorney's Office<br>1200 Third Ave #1620, San Diego,<br>CA 92101  |  |   |