



**August 31, 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 enforcement actions sixty days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting actions 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:

- Endangered Species Chocolate
- Equal Exchange, Inc.
- Madecasse, LLC
- Theo Chocolate, Inc.
- Vosges Haut-Chocolat
- Alfred Ritter GmbH & Co. KG

- Chocolat Bernrain AG
- Fuchs & Hoffmann GmbH
- Machu Picchu Foods SAC
- Maestrani Schweizer Schokoladen AG
- Olam Americas, Inc.
- Puratos Group NV
- Schokinag-Schokolade-Industrie GmbH
- Chocolat Frey AG
- First Source, LLC
- Fran's Chocolates, Ltd.

**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 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:

- Dark Chocolate Bar, 88% Cacao, which is manufactured, distributed and/or sold in California by Endangered Species Chocolates [lead]
- Organic & Fairly Traded Dark Chocolate Bar, Ecuador, 65% Cacao, which is manufactured, distributed and/or sold in California by Equal Exchange, Inc. [cadmium]
- Dark Chocolate Bar, 80% Cacao, which is manufactured, distributed and/or sold in California by Madecasse, LLC [lead]
- Dark Chocolate for Baking Bar, 85% Cacao, which is manufactured, distributed and/or sold in California by Theo Chocolate, Inc. [lead and cadmium]
- Smoked Salt Super Dark Bar, 80% Cacao, which is manufactured, distributed and/or sold in California by Vosges Haut-Chocolat [lead]
- Ritter Sport Fine Extra Dark Chocolate Bar, 73% Cacao, which is manufactured, distributed and/or sold in California by Alfred Ritter GmbH & Co. KG [cadmium]

- Chocolat Stella Noir Extra Dark Chocolate Bar, Costa Rica, 75% Cacao, which is manufactured, distributed and/or sold in California by Chocolat Bernrain AG [cadmium]
- Cocoa liquor WA/Peru, 100% Cacao, which is manufactured, distributed and/or sold in California by Fuchs & Hoffman GmbH [lead and cadmium]
- Pascha Organic Dark Chocolate Chips, Bitter-Sweet, 85% Cacao, which is manufactured, distributed and/or sold in California by Machu Picchu Foods SAC [cadmium]
- Schmerling's of Switzerland Extra Dark Finest Swiss Chocolate Bar, 85% Cacao, which is manufactured, distributed and/or sold in California by Maestrani Schweizer Schokoladen AG [cadmium]
- deZaan Cacao Powder, 100% Cacao, which is manufactured, distributed and/or sold in California by Olam Americas, Inc. [cadmium]
- Belcolade Cocoa Butter & Natural Vanilla Noir Powder, Peru, 64.5% Cacao, which is manufactured, distributed and/or sold in California by Puratos Group NV [cadmium]
- Dark Chocolate Couverture, 59% Cacao, which is manufactured, distributed and/or sold in California by Schokinag-Schokolade-Industrie GmbH [lead]
- Signature Select Dark Chocolate Bar, 85% Cacao, which is manufactured, distributed and/or sold in California by Chocolat Frey AG [cadmium]
- Premium Baking Unsweetened Cocoa Powder, 100% Cacao, which is manufactured, distributed and/or sold in California by First Source, LLC [lead]
- Fran's Dark Hot Chocolate Powder, Single Origin Venezuelan, 65% Cacao, which is manufactured, distributed and/or sold in California by Fran's Chocolate Ltd. [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 August 31, 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:

Sylvia Wu  
Staff Attorney  
As You Sow  
1611 Telegraph Ave., Ste. 1450  
Oakland, CA 94612  
Tel: (510) 735-8156  
Email: [swu@asyousow.org](mailto:swu@asyousow.org)

Sincerely,

A handwritten signature in blue ink that reads "Sylvia Wu" followed by a horizontal line.

Sylvia Wu

## CERTIFICATE OF MERIT

(for As You Sow's Notice of Proposition 65 Violation on Endangered Species Chocolate; Equal Exchange, Inc.; Madecasse, LLC; Theo Chocolate, Inc.; Vosges Haut-Chocolat; Alfred Ritter GmbH & Co. KG; Chocolat Bernrain AG; Fuchs & Hoffmann GmbH; Machu Picchu Foods SAC; Maestrani Schweizer Schokoladen AG; Olam Americas, Inc.; Puratos Group NV; Schokinag-Schokolade-Industrie GmbH; Chocolat Frey AG; First Source, LLC; Fran's Chocolates, Ltd.)

I, Sylvia Wu, 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 Staff Attorney 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 chemicals that are the subject of the action.
4. Based on the information obtained through those consultations, and on all other information in my possession, for each of the consumer products noticed, 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 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 31, 2018



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Sylvia Wu

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 31, 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:

Curt Vander Meer, CEO  
c/o Whitney Bembenick, Director of  
Innovation  
Endangered Species Chocolate  
5846 W. 73rd. St.  
Indianapolis, IN 46278

Rob Everts  
President  
Equal Exchange, Inc.  
50 United Drive  
West Bridgewater, MA 02379

Tim McCollum, CEO  
c/o Patrick Grant-Musso, Director of  
Operations  
Madecasse, LLC  
155 Water St. #608  
Brooklyn, NY 11201-1016

Etienne Patout, CEO  
c/o Dennis Macray, COO  
Theo Chocolate, Inc.  
3400 Phinney Ave N  
Seattle, WA 98103

Thomas Seeger, Head of Legal &  
Communication  
Alfred Ritter GmbH & Co. KG  
c/o Debra Albin-Riley, Counsel

Fernando Guzman, CEO  
Machu Picchu Foods SAC  
c/o Manuel Anaya, Service Agent  
217 E. 66th Street, Apt. 5A  
New York, NY 10065 USA

Greg Estep, Managing Director & CEO  
Olam Americas, Inc.  
c/o Matthias Richter, Service Agent  
535 Plainfield Road, #E  
Willowbrook, IL 60527

Daniel Malcorps, CEO  
Puratos Group NV  
c/o Guillaume Bourneau, Service Agent  
Puratos Corporation  
1660 Suckle Highway  
Pennsauken, NJ 08110

Rolf Eiermann, Managing Director  
Schokinag-Schokolade-Industrie  
Herrmann GmbH & Co. KG  
c/o Brian Warkentin, Service Agent  
Pro Gourmet Foods LLC  
1472 NW Coastal Court  
Bremerton, WA 98312

Hans-Ruedi Christen, President & CEO  
Chocolat Frey AG

Arent Fox, LLP  
555 West Fifth St., 48th Floor  
Los Angeles, CA 90013

Monica Müller, CEO  
Chocolat Bernrain AG  
c/o Albert Lauber, Service Agent  
Neuchatel Chocolates  
461 Limestone Rd. (Rt. 10)  
Oxford, PA 19363

Katrina Markoff, CEO  
c/o George Chao, COO  
Vosges Haut-Chocolat  
2950 North Oakley Ave.  
Chicago, IL 60618

Olaf Reichardt, Managing Director  
Fuchs & Hoffmann GmbH  
c/o Anton Straughan, Service Agent  
Kruger North America, Inc.  
1033 South Blvd.  
Oak Park, IL 60302

c/o Patrick J. Dalton, Counsel  
Harris Beach PLLC  
99 Garnsey Road  
Pittsford, NY 14534

Lynn Utter, CEO  
c/o Bill Waters, CFO  
First Source, LLC  
100 Pirson Parkway  
Tonawanda, NY 14150

Fran Bigelow, President  
Fran's Chocolates Ltd.  
5900 Airport Way S  
Seattle, WA 98108

Guenther Kscheschinski, COO  
Maestrani Schweizer Schokoladen AG  
c/o Marie Andersson, Service Agent  
Haram-Christensen Corporation  
125 Asia Place  
Carlstadt, New Jersey 07072

On August 31, 2018, I served the following documents:

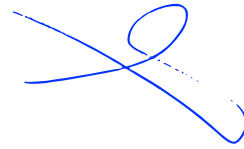
- Notice of Violation of California Health & Safety Code section 25249.5 et seq.
- Certificate of Merit

on each of the 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 August 31, 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 August 31, 2018 at Oakland, California.



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Kwan Hong Teoh