

## NOTICE OF VIOLATION

### California Safe Drinking Water and Toxic Enforcement Act

#### Acrylamide in French-Fried Potatoes Sold Under Private Label Brands

November 9, 2018

This Notice of Violation is provided to you pursuant to and in compliance with California Health and Safety Code Section 25249.7(d).

- For general information regarding the California Safe Drinking Water and Toxic Enforcement Act, see the attached summary provided by the California EPA (copies not provided to public enforcement agencies).
- This Notice of Violation is provided by the Center for Environmental Health (“CEH”), 2201 Broadway, Suite 302, Oakland, CA 94612, (510) 655-3900. CEH is a nonprofit corporation dedicated to protecting the environment, improving human health and supporting environmentally sound practices. Charlie Pizarro is the Associate Director of and a responsible individual within CEH.

#### Description of Violation:

- Violator: The name and address of the violator is:  
  
**McCain Foods USA, Inc.**  
One Tower Lane, 12<sup>th</sup> Floor  
Oakbrook Terrace, IL 60181
- Time Period of Exposure: The violations have been occurring since at least November 9, 2015, and are continuing to this day.
- Provision of Proposition 65: This Notice of Violation covers the “warning provision” of Proposition 65, which is found at California Health and Safety Code Section 25249.6.
- Chemical(s) Involved: The name of the listed chemical involved in these violations is acrylamide. Exposures to acrylamide occur from consumption of the products identified in this Notice.
- Type of Product: The specific type of product causing these violations is french-fried potatoes sold under private label brands (“French Fries”). A non-exclusive example of this specific type of product is the Season’s Choice Seasoned Fries, SKU No. 0 41498 16890 2.
- Description of Exposure: This Notice addresses consumer exposures to acrylamide. Consumption of the products subject to this Notice results in human exposures to acrylamide. The products contain acrylamide, which is formed when the products are cooked at high temperatures. The primary route of

exposure for the violations is direct ingestion when consumers eat the products. These exposures occur in homes, workplaces and everywhere else throughout California where the products are consumed. No clear and reasonable warning is provided with these products regarding the carcinogenic hazards of acrylamide.

**Resolution of Noticed Claims:**

Based on the allegations set forth in this Notice, CEH intends to file a citizen enforcement lawsuit against the alleged violator unless such violator agrees in a binding written instrument to: (1) recall products already sold; (2) provide clear and reasonable warnings for products sold in the future or reformulate such products to eliminate the acrylamide exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health and Safety Code Section 25249.7(b). If the alleged violator is interested in resolving this dispute without resort to expensive and time-consuming litigation, please feel free to contact CEH through its counsel identified below. It should be noted that CEH cannot: (1) finalize any settlement until after the 60-day notice period has expired; nor (2) speak for the Attorney General or any District or City Attorney who received CEH's 60-day Notice. Therefore, while reaching an agreement with CEH will resolve its claims, such agreement may not satisfy the public prosecutors.

**Preservation of Relevant Evidence:**

This Notice also serves as a demand that the alleged violator preserve and maintain all relevant evidence, including all electronic documents and data, pending resolution of this matter. Such relevant evidence includes but is not limited to all documents relating to the presence or potential presence of acrylamide in French Fries; purchase and sales information for such products; efforts to comply with Proposition 65 with respect to such products; communications with any person relating to the presence or potential presence of acrylamide in such products; and representative exemplars of each lot of each variety of any such products sold by the alleged violator since one year prior to the date of this Notice through the date of any trial of the claims alleged in this Notice.

Please direct any inquiries regarding this Notice to CEH's counsel Howard Hirsch at Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117, (415) 913-7800, [hhirsch@lexlawgroup.com](mailto:hhirsch@lexlawgroup.com).

**CERTIFICATE OF MERIT**  
**Health & Safety Code § 25249.7(d)**

I, Howard Hirsch, hereby declare:

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

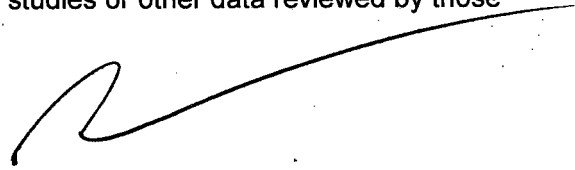
2. I am an attorney with the Lexington Law Group, and I represent the noticing party, the Center for Environmental Health.

3. Members of my firm and I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies or other data regarding the exposures to the listed chemical that is the subject of the action.

4. Based on the information obtained through those consultations, 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 the information did not prove that the alleged violators will be able to establish any of the affirmative defenses set forth in the statute.

5. The copy of the 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 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.

November 9, 2018



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Howard Hirsch  
Attorney for CENTER FOR  
ENVIRONMENTAL HEALTH

1 **PROOF OF SERVICE**

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3 I, Nick Redfield, declare:

4 I am a citizen of the United States and employed in the County of San Francisco, State of  
5 California. I am over the age of eighteen (18) years and not a party to this action. My business  
6 address is 503 Divisadero Street, San Francisco, CA 94117 and my email address is  
7 nredfield@lexlawgroup.com.

8 On November 9, 2018, I served the following document(s) on all interested parties in this  
9 action by placing a true copy thereof in the manner and at the addresses indicated below:

10 **NOTICE OF VIOLATION OF CALIFORNIA SAFE DRINKING WATER AND  
11 TOXIC ENFORCEMENT ACT;**

12 **CERTIFICATE OF MERIT;** and

13 **THE SAFE DRINKING AND TOXIC ENFORCEMENT ACT OF 1986  
14 (PROPOSITION 65): A SUMMARY** (only sent to those on service list marked with an  
15 asterisk).

16  **BY MAIL:** I am readily familiar with the firm's practice for collecting and processing mail  
17 with the United States Postal Service ("USPS"). Under that practice, mail would be deposited  
18 with USPS that same day with postage thereon fully prepaid at San Francisco, California in the  
19 ordinary course of business. On this date, I placed sealed envelopes containing the above  
20 mentioned documents for collection and mailing following my firm's ordinary business practices.

21 *Please see attached service list.*

22  **BY FACSIMILE:** I caused all pages of the document(s) listed above to be transmitted via  
23 facsimile to the fax number(s) as indicated and said transmission was reported as complete and  
24 without error.

25  **BY ELECTRONIC MAIL:** I transmitted a PDF version of the document(s) listed above via  
26 email to the email address(es) indicated on the attached service list [or noted above] before 5 p.m.  
27 on the date executed.

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

Yen Dang  
Supervising Deputy District Attorney  
Santa Clara County  
70 West Hedding Street, West Wing  
San Jose, CA 95110  
epu@da.sccgov.org

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

Allison Haley, District Attorney  
Napa County  
1127 First Street, Suite C  
Napa, CA 94559  
CEPD@countyofnapa.org

1 Stephan R. Passalacqua, District Attorney  
2 Sonoma County  
3 600 Administration Drive, Rm. 212J  
4 Santa Rosa, CA 95403  
5 jbarnes@sonoma-county.org

Mara W. Elliott, City Attorney  
City of San Diego  
1200 Third Ave, Suite 700  
San Diego, CA 92101  
CityAttyCrimProp65@sandiego.gov

4 Phillip J. Cline, District Attorney  
5 Tulare County  
6 221 S. Mooney Avenue, Rm. 224  
7 Visalia, CA 93291  
8 Prop65@co.tulare.ca.us

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

7 Paul E. Zellerbach, District Attorney  
8 Riverside County  
9 4075 Main Street  
10 Riverside, CA 92501  
11 Prop65@rivcoda.org

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

11 Jeff W. Reisig, District Attorney  
12 Yolo County  
13 301 Second Street  
14 Woodland, CA 95695  
15 cfepd@yolocounty.org

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

14 Dije Ndreu, Deputy District Attorney  
15 Monterey County  
16 1200 Aguajito Road  
17 Monterey, CA 93940  
18 Prop65DA@co.monterey.ca.us

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

17 Tori Verber Salazar, District Attorney  
18 San Joaquin County  
19 222 E. Weber Avenue, Room 202  
20 Stockton, CA 95202  
21 DAConsumer.Environmental@sjcda.org

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

20 Christopher Dalbey, Deputy District  
21 Attorney, Santa Barbara County  
22 1112 Santa Barbara Street  
23 Santa Barbara, CA 93101  
24 DAProp65@co.santa-barbara.ca.us

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

25  **BY PERSONAL DELIVERY:** I placed all pages of the document(s) listed above in a sealed  
26 envelope addressed to the party(ies) listed above, and caused such envelope to be delivered by  
hand to the addressee(s) as indicated.

27  **BY OVERNIGHT DELIVERY:** I deposited such document(s) in a box or other facility  
28 regularly maintained by FedEx, or delivered such document(s) to a courier or driver authorized by  
FedEx, with delivery fees paid or provided for, and addressed to the person(s) being served.

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

3 Executed on November 9, 2018 at San Francisco, California.

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6 Nick Redfield  
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## SERVICE LIST

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

District Attorney of Amador County  
708 Court Street, Ste. 202  
Jackson, CA 95642

District Attorney of Butte County  
Administration Building  
25 County Center Drive  
Oroville, CA 95965

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

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

District Attorney of Del Norte County  
450 H Street, Ste. 171  
Crescent City, CA 95531

District Attorney of El Dorado County  
778 Pacific Street  
Placerville, CA 95667

District Attorney of Fresno County  
2220 Tulare Street, Ste. 1000  
Fresno, CA 93721

District Attorney of Glenn County  
P.O. Box 430  
Willows, CA 95988

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

District Attorney of Imperial County  
939 Main Street, Ste. 102  
El Centro, CA 92243

District Attorney of Inyo County  
P.O. Drawer D  
Independence, CA 93526

District Attorney of Kern County  
1215 Truxtun Avenue  
Bakersfield, CA 93301

District Attorney of Kings County  
1400 West Lacey Blvd.  
Hanford, CA 93230

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

District Attorney of Los Angeles County  
Hall of Justice  
211 W. Temple Street, Ste. 1200  
Los Angeles, CA 90012-3210

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

District Attorney of Marin County  
3501 Civic Center Drive, Rm. 130  
San Rafael, CA 94903

District Attorney of Mariposa County  
P.O. Box 730  
Mariposa, CA 95338

District Attorney of Mendocino County  
P.O. Box 1000  
Ukiah, CA 95482

District Attorney of Merced County  
2222 "M" Street  
Merced, CA 95340

District Attorney of Modoc County  
204 S. Court Street, Rm. 202  
Alturas, CA 96101-4020

District Attorney of Mono County  
P.O. Box 617  
Bridgeport, CA 93546

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

District Attorney of Orange County  
401 Civic Center Drive West  
Santa Ana, CA 92701

District Attorney of Placer County  
10810 Justice Center Drive, Ste. 240  
Roseville, CA 95678

District Attorney of Plumas County  
520 Main Street, Rm. 404  
Quincy, CA 95971

District Attorney of San Benito County  
419 Fourth Street, 2<sup>nd</sup> Fl.  
Hollister, CA 95023

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

District Attorney of San Diego County  
330 West Broadway, Ste. 1300  
San Diego, CA 92101

District Attorney of San Mateo County  
400 County Center, 3<sup>rd</sup> Fl.  
Redwood City, CA 94063

District Attorney of Shasta County  
1355 West Street  
Redding, CA 96001

District Attorney of Sierra County  
Courthouse  
100 Courthouse Sq., 2<sup>nd</sup> Fl.  
Downieville, CA 95936

District Attorney of Siskiyou County  
P.O. Box 986  
Yreka, CA 96097

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

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

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

District Attorney of Tehama County  
P.O. Box 519  
Red Bluff, CA 96080

District Attorney of Trinity County  
P.O. Box 310  
11 Court Street  
Weaverville, CA 96093

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

District Attorney of Yuba County  
215 Fifth Street  
Marysville, CA 95901

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

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

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

California Attorney General's Office  
Attention: Proposition 65 Coordinator and Robert  
Thomas  
1515 Clay Street, Ste. 2000  
P.O. Box 70550  
Oakland, CA 94612-0550

Sarah Esmaili\*  
Arnold & Porter Kaye Scholer LLP  
Three Embarcadero Center, 10th Floor  
San Francisco, CA 94111  
*Counsel for McCain Foods USA, Inc.*