

## NOTICE OF VIOLATION

### California Safe Drinking Water and Toxic Enforcement Act

Lead in Molasses

November 30, 2018

This Notice of Violation (the "Notice") 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 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:

- Violators: The names and addresses of the violators are identified on the attached Exhibit 1.
- Time Period of Exposure: The violations have been occurring since at least November 30, 2015, and are ongoing.
- Provision of Proposition 65: This Notice covers the "warning provision" of Proposition 65, which is found at California Health and Safety Code Section 25249.6.
- Chemical(s) Involved: The names of the listed chemicals involved in these violations are lead and lead compounds ("Lead"). Exposures to Lead occur from consumption of the products identified in this Notice.
- Type of Product: The specific type of product causing these violations is molasses. Non-exclusive examples of this specific type of product are identified on the attached Exhibit 1. Further limitations, if any, on the specific products subject to this Notice for each individual violator are also identified on Exhibit 1.
- Description of Exposure: This Notice addresses consumer exposures to Lead. Consumption of the products identified in this Notice results in human exposures to Lead. The products contain Lead. The primary route of exposure for the violations is direct ingestion when consumers eat the products or food from which

these products are made. 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 or reproductive hazards of Lead.

**Resolution of Noticed Claims:**

Based on the allegations set forth in this Notice, CEH intends to file a citizen enforcement lawsuit against each 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 Lead exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health and Safety Code Section 25249.7(b). If any 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 each 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 Lead in molasses; 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 Lead in such products; and representative exemplars of each unit of any such products sold by each alleged violator in the year preceding 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 Eric S. Somers at Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117, (415) 913-7800, esomers at lexlawgroup.com.

**EXHIBIT 1**  
**November 30, 2018 Notice of Violation**  
**Lead in Molasses**

<b>Names and Addresses of Responsible Parties</b>	<b>Further Limitation on Products Sold by Violators</b>	<b>Non-Exclusive Examples of the Products</b>
<p><b>B&amp;G Foods North America, Inc.</b>  Four Gatehall Drive  Parsippany, NJ 07054</p>	<p>n/a</p>	<p>Brer Rabbit Molasses  Full Flavor Unsulphured  UPC No.  0-24000-33513-9</p>
<p><b>Good Food, Inc.</b>  4960 Horseshoe Pike  Honey Brook, PA 19344</p>	<p>n/a</p>	<p>Golden Barrel Unsulphured  Blackstrap Molasses  Item No. 999BLKS1232  UPC No.  0-77391-32111-3</p>
<p><b>Honeytree, Inc.</b>  8570 Monroe Road  Onsted, MI 46265</p>	<p>n/a</p>	<p>Slow As Molasses  Light &amp; Mild, Pure Unsulphured  Item No. SOE6331216  UPC No.  0-41496-33121-6</p>
<p><b>Target Corporation</b>  1000 Nicollet Mall  Minneapolis, MN 55403</p>	<p>Sold under the  Simply Balanced brand</p>	<p>Simply Balanced  Organic Blackstrap  Molasses Unsulphured  UPC No.  0-85239-06780-2</p>
<p><b>Trader Joe's Company</b>  800 S. Shamrock Avenue  Monrovia, CA 91016</p>	<p>Sold under the  Trader Joe's brand</p>	<p>Trader Joe's  Organic Blackstrap  Molasses Unsulphured  SKU No. 0057-8073</p>
<p><b>Vitacost.com, Inc.</b>  5400 Broken Sound Pkwy NW  Suite 500  Boca Raton, FL 33487</p>	<p>Sold by  Honeytree, Inc.</p>	<p>Slow As Molasses  Light &amp; Mild, Pure Unsulphured  Item No. SOE6331216  UPC No.  0-41496-33121-6</p>
<p><b>Wal-Mart.com USA, LLC</b>  702 SW 8<sup>th</sup> Street  Bentonville, AR 72716</p>	<p>Sold by  B&amp;G Foods  North America, Inc.</p>	<p>Brer Rabbit Molasses  Full Flavor Unsulphured  UPC No.  0-24000-33513-9</p>

**The WEBstaurant Store, Inc.**  
2205 Old Philadelphia Pike  
Lancaster, PA 17602

Sold by  
Good Food, Inc.

Golden Barrel Unsulphured  
Blackstrap Molasses  
Item No. 999BLKS1232  
UPC No.  
0-77391-32111-3

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

I, Eric S. Somers, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the parties identified in the notice have 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 30, 2018

  
\_\_\_\_\_  
Eric S. Somers  
Attorney for CENTER FOR  
ENVIRONMENTAL HEALTH

1 **PROOF OF SERVICE**

2  
3 I, Alexis Pearson, 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  
apearson@lexlawgroup.com.

7 On November 30, 2018, I served the following document(s) on all interested parties in this  
8 action by placing a true copy thereof in the manner and at the addresses indicated below:

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

11 **CERTIFICATE OF MERIT;** and

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

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

20 *Please see attached service list.*

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

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

27 Stacey Grassini, Deputy District Attorney  
28 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  
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220 S. Lassen Street  
Susanville, CA 96130  
mlatimer@co.lassen.ca.us

Allison Haley, District Attorney  
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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

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

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

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

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

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

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

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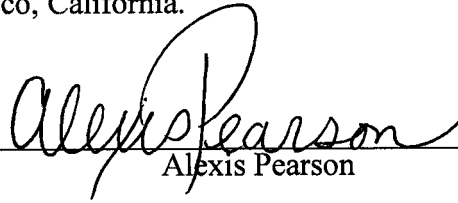
25  **BY PERSONAL DELIVERY:** I placed all pages of the document(s) listed above in a sealed  
26 envelope addressed to the party(ies) listed above, and caused such envelope to be delivered by  
27 hand to the addressee(s) as indicated.

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.

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

Executed on November 30, 2018 at San Francisco, California.

  
Alexis Pearson



## SERVICE LIST

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

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Hollister, CA 95023

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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

President\*  
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