

SIXTY-DAY NOTICE OF INTENT TO SUE FOR VILATION OF THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (Cal. Health & Safety Code § 25249.5, et seq.) ("Proposition 65")

February 14, 2020

Re: Violations of Proposition 65 concerning food products containing Acrylamide

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I am the Chief Operating Office of Key Sciences, LLC ("Key Sciences"). Key Sciences is a limited liability corporation whose mission is to ensure accuracy of labeling for the benefit and protection of consumers of packaged goods through rigorous scientific testing.

Key Sciences has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 et seq., with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violators identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, Key Sciences intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

General Information about Proposition 65. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is attached with the copy of this letter served to the alleged Violators identified below.

Alleged Violators. The names of the companies covered by this notice that violated Proposition 65 (hereinafter the "Violators") are:

CONAGRA BRANDS, INC.

<u>Consumer Products and Listed Chemical</u>. The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

- 1. David Original Sunflower Seeds Roasted & Salted (5.25 oz)
- 2. David Pumpkin Seeds All Natural Roasted & Salted (5 oz)
- 3. David Sunflower Seeds Cracked Pepper Jumbo (5.25 oz)

On January 1, 1990, the State of California officially listed acrylamide as a chemical known to cause cancer.



It should be noted that Key Sciences may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

Route of Exposure. The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least 21 March, 2019, as well as every day since the products were introduced into the California marketplace, and 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. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, Key Sciences is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of these products; (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. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time-consuming litigation.

Please direct all questions concerning this notice to Key Sciences at the above listed address and telephone number.

Sincerely,

Kyle Wallace

Chief Operating Officer

Key Sciences

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Conagra Brands, LLC, and their Registered Agents for Service of

Process only)

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

CERTIFICATE OF MERIT

Re: Key Sciences, LLC's Notice of Proposition 65 Violations by Conagra Brands, LLC.

I, Kyle Wallace, declare:

- 1. This Certificate of Merit accompanies the attached 60-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 the Chief Operating Officer for the noticing party.
- 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 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 Violators 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 served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, 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: February 14, 2020

Kyle Wallace

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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 of age. My business address is 7000 Broadway, Suite 305, Denver, CO. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Denver, CO.

On February 14, 2020, between 8:00 a.m. and 5:00 p.m. Mountain Time, I served the following documents: NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §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 each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO Conagra Brands, LLC. 801 Adlai Stevenson Drive Springfield, IL 62703

Leo A Knowles Conagra Brands, LLC. 1 Conagra Drive Omaha, NE 68102

On February 14, 2020, between 8:00 a.m. and 5:00 p.m. Mountain Time, I verified the following documents NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1) were served 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 Post Office Box 70550 Oakland, CA 94612-0550

On February 14, 2020, between 8:00 a.m. and 5:00 p.m. Mountain Time, I served the following documents: NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; on each of the parties on the Service List attached hereto by placing a true and correct .PDF copy thereof to be sent via electronic mail to the parties listed below, pursuant to Cal. Code Regs., title. 27, §25903(c)(I) or via First Class Mail through the United States Postal Service by placing a true and correct copy in a sealed envelope, addressed to the entity listed below and providing such an envelope to a United States Postal Service Representative.

Executed on February 14, 2020, in Denver, CO

List for Service by Electronic Mail

Al le County District Attorney	Calaveras County District Attorney
Alameda County District Attorney	Prop65Env@co.calaveras.ca.us
CEPDProp64@acgov.org	Inyo County District Attorney
Contra Costa County District Attorney	inyoda@inyocounty.us
sgrassini@contracostada.org	Monterey County District Attorney
Lassen County District Attorney	
mlatimer@co.lassen.ca.us	Prop65DA@co.monterey.ca.us
Napa County District Attorney	Riverside County District Attorney
CEPD@countyofnapa.org	Prop65@rivcoda.org
Sacramento County District Attorney	San Diego City Attorney
Prop65@sacda.org	CityAttyProp65@sandiego.gov
San Diego County District Attorney	San Francisco County District Attorney
CityAttyCrimProp65@sandiego.gov	Gregory.alker@sfgov.org
	San Joaquin County District Attorney
San Francisco City Attorney	DA
Valerie.Lopez@sfcityatty.org	DAConsumer.Environmental@sjcda.org
	Santa Barbara County District Attorney
San Luis Obispo County District Attorney	DAProp65@co.santa-barbara.ca.us
edobroth@co.slo.ca.us	
Santa Clara County District Attorney	Santa Cruz County District Attorney
EPU@da.sccgov.org	Prop65DA@santacruzcounty.us
Sonoma County District Attorney	Tulare County District Attorney
jbarnes@sonoma-county.org	Prop65@co.tulare.ca.us
Ventura County District Attorney	Yolo County District Attorney
	cfepd@yolocounty.org
daspecialops@ventura.org	

List for Service by Mail

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

District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642

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

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 778 Pacific St. 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 Street, Ste 102 El Centro, CA 92243

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 Street Lakeport, CA 95453

District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 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 West Civic Center Drive Santa Ana, CA 92701

District Attorney, Placer County 10810 Justice Center Drive, Ste 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 303 West Third Street San Bernadino, CA 92415

District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101 District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063

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

District Attorney, Sierra County 100 Courthouse Square, 2nd Floor Downieville, CA 95936

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

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

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

District Attorney, Sutter County 463 2nd 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 Street, Suite 800 Los Angeles, CA 90012

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



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