



May 15, 2020

**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 Berkeley, 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.*; specifically Section 25249.6, which provides that “[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual ...” This letter serves to provide AYS’s notification of these violations to the public enforcement agencies. Pursuant to section 25249.7(d) of the statute, AYS intends to bring an enforcement action sixty days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action 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:

- Amazon.com, Inc. and Whole Foods Market, Inc.
- Chiquita Brands International
- Kehe Distributors, LLC;
- The Kroger Co.;
- Organicgirl, LLC;
- Sprouts Farmers Market, Inc.;

- Taylor Fresh Foods, Inc.

Chemicals. These violations involve exposures to cadmium from the products listed below. The State of California has officially listed cadmium as a chemical known to cause cancer, developmental toxicity and 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.

Consumer products. The products that are the subject of this notice are spinach products that contain cadmium and are, at any time, manufactured, distributed, or sold by the alleged violators, including but not limited to the products listed in the following table.

<i>Products</i>	<i>Chemicals</i>	<i>Companies</i>
<ul style="list-style-type: none"> • 365 Organic Whole Leaf Spinach [frozen] 	Cadmium	Amazon.com, Inc. and Whole Foods Market, Inc.
<ul style="list-style-type: none"> • Fresh Express – Baby Spinach [fresh] 	Cadmium	Chiquita Brands International
<ul style="list-style-type: none"> • Cadia Organic Cut Spinach [frozen] 	Cadmium	Kehe Distributors, LLC
<ul style="list-style-type: none"> • Kroger Cut Leaf Spinach [frozen] 	Cadmium	The Kroger Co.
<ul style="list-style-type: none"> • Organic Girl – Baby Spinach [fresh] 	Cadmium	Organicgirl, LLC
<ul style="list-style-type: none"> • Sprouts Cut Leaf Spinach [frozen] 	Cadmium	Sprouts Farmers Market, Inc.
<ul style="list-style-type: none"> • Earthbound Farm – Organic Baby Spinach [fresh] 	Cadmium	Taylor Fresh Foods, Inc.

Route of exposure. Use of the products identified in this notice result in human exposures to cadmium. The route of exposure is ingestion. No clear and reasonable warning is provided with the products regarding the health or reproductive hazards of cadmium.

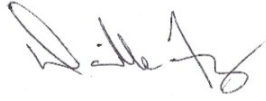
Duration of violation. These ongoing violations have occurred on every day since at least May 15, 2019, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or 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, *As You Sow* is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation. You may communicate directly with *As You Sow* to discuss this matter by contacting Danielle Fugere, President via tel: (510) 735-8141 or

email: dfugere@asyousow.org.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Danielle Fugere', with a stylized flourish at the end.

Danielle Fugere

CERTIFICATE OF MERIT

(for *As You Sow*'s Notice of Proposition 65 Violation on Amazon.com, Inc. and Whole Foods Market, Inc.; Chiquita Brands International; Kehe Distributors, LLC; The Kroger Co.; Organicgirl, LLC; Sprouts Farmers Market, Inc.; and Taylor Fresh Foods, Inc.)

I, Chelsea Linsley, declare:

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.

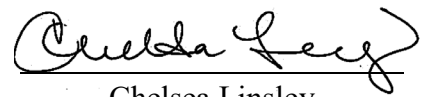
I am Staff Attorney of the noticing party.

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 chemical that is the subject of the action.

Based on the information obtained through those consultations, and on all 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.

The copy of this Certificate of Merit served on the Attorney General has attached to it 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: May 15, 2019


Chelsea Linsley

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: 2150 Kittredge Street, Ste. 450, Berkeley, CA 94704.

On May 15, 2020, 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:

W. Rodney McMullen
Chairman and CEO
The Kroger Co.
1014 Vine St
Cincinnati, Ohio 45202-1100

Brandon Barnholt
President & Chief Executive Officer
Kehe Distributors, LLC
1245 E Diehl Rd Ste 200
Naperville, Illinois 60563-4816

The Kroger Co.
c/o Corporation Service Company
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 94833

KeHe Distributors, LLC
c/o CT Corporation System
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

John Mackey
Chief Executive Officer
Whole Foods Market, Inc.
550 Bowie St
Austin, Texas 78703-4644

Bruce Taylor
Chief Executive Officer
Taylor Fresh Foods, Inc.
150 Main St Ste 400
Salinas, California, 93901-3442

Whole Foods Market, Inc.
c/o CT Corporation System
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

Taylor Fresh Foods, Inc.
c/o JOHN MAZZEI
150 Main St Ste 400
Salinas, California, 93901-3442

Jeffrey P. Bezos
Chairman of the Board, President, Chief
Executive Officer
Amazon.com, Inc.
410 Terry Ave N
Seattle, Washington, 98109-5210

Brian W. Kocher
Chief Executive Officer
Chiquita Brands International
1855 Griffin Rd Ste C436
Dania, Florida 33004-2275

Amazon.com, Inc.
c/o Corporation Service Company
2710 Gateway Oaks, Drive, Suite 150N
Sacramento, CA 95833

Chiquita Brands International
c/o CT Corporation System
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

Jack L. Sinclair
Chief Executive Officer, Director
Sprouts Farmers Market, Inc.
5455 E High St Ste 111
Phoenix, Arizona, 85054-5464

Mark Drever
Chief Executive Officer
Organicgirl, LLC
900 Work St
Salinas, California 93901-4386

Sprouts Farmers Market, Inc.
c/o Corporation Service Company
2711 Centerville Rd., Suite 400
Wilmington, DE 19801

Organicgirl, LLC
c/o Capitol Corporate Services, Inc.
455 Capitol Mall Complex, Suite 217
Sacramento, CA 95814

On May 15, 2020, 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 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.

On May 15, 2020, 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 May 15, 2020, at Berkeley, California.



Kwan Hong Teoh