

## NOTICE OF VIOLATION

California Safe Drinking Water  
and Toxic Enforcement Act

Lead in Sobisk Breakfast Sandwiches

July 28, 2020

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 508, Oakland, CA 94612, (510) 655-3900. CEH is a nonprofit corporation dedicated to protecting the environment, improving human health, and supporting environmentally sound practices. Caroline Cox is the Senior Scientist of and a responsible individual within CEH.

### Description of Violation:

- Violators: The names and addresses of the violators are:

**Sobisk Foods, LLC**  
508 E Boxborough Drive  
Wilmington, DE 19810

**Dollar Tree Stores, Inc.**  
500 Volvo Parkway  
Chesapeake, VA 23320

- Time Period of Exposure: The violations have been occurring since at least July 28, 2017, 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 Sobisk Breakfast Sandwiches. A non-exclusive example of this specific type of product

is: Sobisk Breakfast Sandwich – Peanut Butter Honey Biscuits with Peanut Butter Filling, UPC No. 8-52704-00535-1.

- 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. 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 Sobisk Breakfast Sandwiches; 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 Ryan Berghoff at Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117, (415) 913-7800, [rberghoff@lexlawgroup.com](mailto:rberghoff@lexlawgroup.com).

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

I, Ryan Berghoff, 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.

July 28, 2020



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Ryan Berghoff  
Attorney for CENTER FOR  
ENVIRONMENTAL HEALTH

1 **PROOF OF SERVICE**

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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 July 28, 2020, 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  
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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

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

11 Paul E. Zellerbach, District Attorney  
12 Riverside County  
13 4075 Main Street  
14 Riverside, CA 92501  
15 Prop65@rivcoda.org

16 Jeff W. Reisig, District Attorney  
17 Yolo County  
18 301 Second Street  
19 Woodland, CA 95695  
20 cfepd@yolocounty.org

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22 Monterey County  
23 1200 Aguajito Road  
24 Monterey, CA 93940  
25 Prop65DA@co.monterey.ca.us

26 Tori Verber Salazar, District Attorney  
27 San Joaquin County  
28 222 E. Weber Avenue, Room 202  
Stockton, CA 95202  
DAConsumer.Environmental@sjcda.org

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Nancy O'Malley, District Attorney  
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Oakland, CA 94621  
CEPDProp65@acgov.org

Office of the District Attorney  
Calaveras County  
891 Mountain Ranch Road  
San Andreas, CA 95249  
Prop65Env@co.calaveras.ca.us

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

3 ☐ **BY OVERNIGHT DELIVERY:** I deposited such document(s) in a box or other facility  
4 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.

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

6 Executed on July 28, 2020 at San Francisco, California.

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Alexis Pearson

## **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  
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Nevada City, CA 95959

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San Jose, CA 95113

Phillip J. Cline, District Attorney  
Tulare County  
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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/CEO\*  
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