



**GLICK LAW GROUP**

225 Broadway, 19th Floor, San Diego, CA 92101  
Tel: 619.382.3400 Fax: 619.615.2193  
www.glicklawgroup.com

November 24, 2020

**Via Certified Mail**

The K Market  
Attn. Legal Department  
760 E. El Camino Real  
Sunnyvale, CA 94087

**Re: Proposition 65 Notice of Violation**

To Whom It May Concern:

We represent Environmental Health Advocates, Inc., an organization in the State of California acting in the interest of the general public. This letter serves as notice that the parties listed above are in violation of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act, commencing with section 25249.5 of the Health and Safety Code (“Proposition 65”). In particular, the violations alleged by this notice consist of types of harm that may potentially result from exposures to the toxic chemical Acrylamide. This chemical was listed as a carcinogen on January 1, 1990 and listed as a developmental and reproductive toxin on February 25, 2011.

The specific type of product that is causing exposures in violation of Proposition 65 are almond crisps, including but not limited to:

	<b><u>Product Name</u></b>	<b><u>Manufacturer</u></b>	<b><u>Distributor/Retailer</u></b>	<b><u>Item Number/SKU</u></b>
1.	K-Bakery Almond Crisps	The K Market	The K Market	UPC N/A

The route of exposure for the violations is ingestion by consumers. These exposures occur through the reasonably foreseeable use of the product. The sales of this product have been occurring since at least October 2020, are continuing to this day and will continue to occur as long as the product subject to this notice is sold to and used by consumers.

Proposition 65 requires that a clear and reasonable warning is provided with these products regarding the exposures to Acrylamide caused by ordinary use of the product. The Parties are in violation of Proposition 65 by failing to provide such warning to consumers and as a result of the sales of this product, exposures to Acrylamide have been occurring without proper warnings.

Pursuant to Proposition 65, notice and intent to sue shall be provided to violators 60-days before filing a complaint. This letter provides notice of the alleged violation to the parties listed above and the appropriate governmental authorities. A summary of Proposition 65 is attached.

If you have any questions or wish to discuss any of the above, please contact me.

Sincerely,

A handwritten signature in blue ink that reads "Noam Glick". The signature is written in a cursive, flowing style.

Noam Glick

Enclosures

## Appendix A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA PROTECTION AGENCY THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACTION 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the office of Environmental Health Hazard Assessment, the lead and Toxic Enforcement Act 1986 (commonly known as "Proposition 65") A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide law. The reader is directed to the statute and its implementing regulations (See citations below) for further information.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code Regulations, Sections 250000 through 27000.

#### **WHAT DOES PROPOSITION 65 REQUIRE?**

*The "Governor's List."* Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 725 chemicals have been listed as of November 16, 2001. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release, or otherwise engage in activities involving those chemicals must comply with the

following:

***Clear and Reasonable Warnings.*** A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of the listing of the chemical.

***Prohibition from discharges into drinking water.*** A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Discharges are exempt from this requirement if they occur less than twenty months after the date of the listing of chemical.

#### **DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?**

Yes. The law exempts:

***Governmental agencies and public water utilities.*** All agencies of the federal, State or local government, as well as entities operating public water systems, are exempt.

***Exposures that pose no significant risk of cancer.*** For chemicals that are listed as known to the State to cause cancer (“carcinogens”), a warning is not required if the business can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70- year lifetime. The Proposition 65 regulations identify specific “ no significant risk” levels for more than 250 listed carcinogens.

***Exposures that will produce no observable reproductive effect at 1,000 times the level in question.*** For chemicals known to the State to cause birth defects or other reproductive harm (“reproductive toxicants”), a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level (NOEL), “ divided by a 1,000- fold safety or uncertainty factor. The “no observable effect level” is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect.

***Discharge that do not result in a “significant amount” of the listed chemical entering into any source of drinking water.*** The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the list chemical has not, does not, or will not enter any drinking water source, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount; expect an amount that would meet the “ no significant risk” or “no observable effect” test if an individual were exposed to

such an amount in drinking water.

### **HOW IS PROPOSITION 65 ENFORCED?**

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys (those in cities with a population exceeding 750,000). Lawsuit may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. A notice must comply with the information and procedural requirements specified in regulations (Title 27. California Code of Regulations, Section 25903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court of law to stop committing the violation.

### **FOR FURTHER INFORMATION....**

Contact the Office of Environmental Health Hazard Assessment’s Proposition 65 Implementation Office at (916)445-6900

## CERTIFICATE OF MERIT

I, Noam Glick, hereby declare:

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

2. I am an attorney for the noticing party.

3. 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 alleged exposure to the listed chemical that is the subject of the action.

4. 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 plaintiffs' case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.

5. The copy of this 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 and Safety Code section 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: November 24, 2020



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Noam Glick, Attorney at Law

## **CERTIFICATE OF SERVICE**

I, Leilani Lu, declare that I am over the age of 18 years, and am not a party to the within action. I am employed in the County of San Diego, California, where the mailing occurs; and my business address is 225 Broadway, 21st Floor, San Diego, California 92101.

On November 24, 2020, I served the following documents: **(1) 60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(d); (2) CERTIFICATE OF MERIT; (3) PROPOSITION 65: A SUMMARY; and (4) CERTIFICATE OF MERIT ATTACHMENT (served only on the Attorney General)** on the parties listed below by placing a true and correct copy thereof in a sealed envelope, addressed to each party and depositing it at my business address with the U.S. Postal Service for delivery by Certified Mail with the postage thereon fully prepaid:

### **Via Certified Mail**

The K Market  
Attn. Legal Department  
760 E. El Camino Real  
Sunnyvale, CA 94087

On November 24, 2020, I served the California Attorney General (via website Portal) by uploading a true and correct copy thereof as a PDF file via the California Attorney General's website.

On November 24, 2020, I transmitted via electronic mail the above-listed documents to the electronic mail addresses of the City and/or District Attorneys who have specifically authorized e-mail service and the authorization appears on the Attorney General's web site.

### **See Attached Service List**

On November 24, 2020, I served the following persons and/or entities at the last known address by placing a true and correct copy thereof in a sealed envelope and depositing it at my business address with the U.S. Postal Service for delivery with the postage thereon fully prepaid, and addressed as follows:

### **See Attached Service List**

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

Executed on November 24, 2020 in San Diego, California.

*Leilani Xinyue Lu*  
Leilani Lu

## E-Mail Service List

Stacey Grassini, Deputy District Attorney  
CONTRA COSTA COUNTY  
900 Ward Street  
Martinez, CA 94553  
[sggrassini@contracostada.org](mailto:sggrassini@contracostada.org)

Michelle Latimer, Program Coordinator  
LASSEN COUNTY  
220 S. Lassen Street  
Susanville, CA 96130  
[mlatimer@co.lassen.ca.us](mailto:mlatimer@co.lassen.ca.us)

Dije Ndreu, Deputy District Attorney  
MONTEREY COUNTY  
1200 Aguajito Road  
Monterey, CA 93940  
[Prop65DA@co.monterey.ca.us](mailto:Prop65DA@co.monterey.ca.us)

Gary Lieberstein, District Attorney  
NAPA COUNTY  
931 Parkway Mall  
Napa, CA 94559  
[CEPD@countyofnapa.org](mailto:CEPD@countyofnapa.org)

Paul E. Zellerbach, District Attorney  
RIVERSIDE COUNTY  
3072 Orange Street  
Riverside, CA 92501  
[Prop65@rivcoda.org](mailto:Prop65@rivcoda.org)

Barbara Yook, District Attorney  
CALAVERAS COUNTY  
891 Mountain Ranch Rd.  
San Andreas, CA 95249  
[Prop65Env@co.calaveras.ca.us](mailto:Prop65Env@co.calaveras.ca.us)

Gregory Alker, Assistant District Attorney  
SAN FRANCISCO COUNTY  
732 Brannan Street  
San Francisco, CA 94103  
[gregory.alker@sfgov.org](mailto:gregory.alker@sfgov.org)

Summer Stephan, District Attorney  
SAN DIEGO COUNTY  
330 West Broadway  
San Diego, CA 92101  
[SanDiegoDAProp65@sdacda.org](mailto:SanDiegoDAProp65@sdacda.org)

Mark Ankcorn, Deputy City Attorney  
CITY OF SAN DIEGO  
1200 Third Avenue  
San Diego, CA 92101  
[CityAttyCrimProp65@sandiego.gov](mailto:CityAttyCrimProp65@sandiego.gov)

Valerie Lopez, Deputy City Attorney  
CITY OF SAN FRANCISCO  
1390 Market Street, 7th Floor  
San Francisco, CA 94102  
[Valerie.Lopez@sfcityatty.org](mailto:Valerie.Lopez@sfcityatty.org)

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](mailto:edobroth@co.slo.ca.us)

Bud Porter, Supervising Deputy District Attorney  
SANTA CLARA COUNTY  
70 W Hedding St  
San Jose, CA 95110  
[EPU@da.sccgov.org](mailto:EPU@da.sccgov.org)

Stephan R. Passalacqua, District Attorney  
SONOMA COUNTY  
600 Administration Drive  
Sonoma, CA 95403  
[jbarnes@sonoma-county.org](mailto:jbarnes@sonoma-county.org)

Phillip J. Cline, District Attorney  
TULARE COUNTY  
221 S Mooney Blvd  
Visalia, CA 95370  
[Prop65@co.tulare.ca.us](mailto:Prop65@co.tulare.ca.us)

Gregory D. Totten, District Attorney  
VENTURA COUNTY  
800 S Victoria Ave  
Ventura, CA 93009  
[daspecialops@ventura.org](mailto:daspecialops@ventura.org)

Jeff W. Reisig, District Attorney  
YOLO COUNTY  
301 Second Street  
Woodland, CA 95695  
[cfepd@yolocounty.org](mailto:cfepd@yolocounty.org)

Tori Verber Salazar, District Attorney  
SAN JOAQUIN COUNTY  
222 E. Weber Avenue, Room 202  
Stockton, CA 95202  
[DAConsumer.Environmental@sjcda.org](mailto:DAConsumer.Environmental@sjcda.org)

Christopher Dalbey, Deputy District Attorney  
SANTA BARBARA COUNTY  
1112 Santa Barbara St.  
Santa Barbara, CA 93101  
[DAProp65@co.santa-barbara.ca.us](mailto:DAProp65@co.santa-barbara.ca.us)

Nancy O'Malley, District Attorney  
ALAMEDA COUNTY  
7776 Oakport Street, Suite 650  
Oakland, CA 94621  
[CEPDProp65@acgov.org](mailto:CEPDProp65@acgov.org)

Barbara M. Yook, District Attorney  
CALAVERAS COUNTY  
891 Mountain Ranch Road  
San Andreas CA 95249  
[Prop65Env@co.calaveras.ca.us](mailto:Prop65Env@co.calaveras.ca.us)

Dennis J. Herrera, City Attorney  
CITY OF SAN FRANCISCO  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place San  
Francisco, CA 94102  
[Valerie.lopez@sfcityatty.org](mailto:Valerie.lopez@sfcityatty.org)

David Hollister, District Attorney  
PLUMAS COUNTY  
520 Main St.  
Quincy, CA 95971  
[davidhollister@countyofplumas.com](mailto:davidhollister@countyofplumas.com)

Anne Marie Schubert, District Attorney  
SACRAMENTO COUNTY  
901 G Street  
Sacramento, CA 95814  
[Prop65@sacda.org](mailto:Prop65@sacda.org)

Jeffrey S. Rosell, District Attorney  
SANTA CRUZ COUNTY  
701 Ocean Street  
Santa Cruz, CA 95060  
[Prop65DA@santacruzcounty.us](mailto:Prop65DA@santacruzcounty.us)

Tori Verber Salazar, District Attorney  
222 E. Weber Avenue, Room 202  
Stockton, CA 95202  
[DAConsumer.Environmental@sjcda.org](mailto:DAConsumer.Environmental@sjcda.org)

## Mail Service List

District Attorney ALAMEDA COUNTY 1225 Fallon Street, Room 900 Oakland, CA 94612	District Attorney INYO COUNTY 168 North Edwards Independence, CA 93526	District Attorney MONTEREY COUNTY PO BOX 1131 Salinas, CA 93902	District Attorney SAN LUIS OBISPO COUNTY Courthouse Annex, 4th Floor San Luis Obispo, CA 93408
District Attorney ALPINE COUNTY PO Box 248 Markleeville, CA 96120	District Attorney KERN COUNTY 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney NAPA COUNTY 1127 First Street, Ste. C Napa, CA 94559	District Attorney SAN MATEO COUNTY 400 County Center, Third Floor Redwood City, CA 94063
District Attorney AMADOR COUNTY 708 Court Street, #202 Jackson, CA 95642	District Attorney KINGS COUNTY 1400 West Lacey Blvd. Hanford, CA 93230	District Attorney NEVADA COUNTY 201 Commercial Street Nevada City, CA 95959	District Attorney SANTA BARBARA COUNTY 1112 Santa Barbara Street Santa Barbara, CA 93101
District Attorney BUTE COUNTY 25 County Center Drive Administration Building Oroville, CA 95965	District Attorney LAKE COUNTY 255 N. Forbes Street Lakeport, CA 95453	District Attorney ORANGE COUNTY 401 Civic Center Drive West Santa Ana, CA 92701	District Attorney SANTA CLARA COUNTY 70 West Hedding Street, West Wing San Jose, CA 95110
District Attorney CALAVERAS COUNTY 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney LASSEN COUNTY 220 S. Lassen Street, Suite. 8 Susanville, CA 96130	District Attorney PLACER COUNTY 10810 Justice Center Drive Roseville, CA 95678	District Attorney SANTA CRUZ COUNTY 701 Ocean Street, Room 200 Santa Cruz, CA 95060
District Attorney COLUSA COUNTY 346 5th Street, Suite. 101 Colusa, CA 95932	District Attorney LOS ANGELES COUNTY 210 W. Temple Street Los Angeles, CA 90012	District Attorney PLUMAS COUNTY 520 Main Street, Room 404 Quincy, CA 95971	District Attorney SHASTA COUNTY 1355 West Street Redding, CA 96001
District Attorney CONTRA COSTA COUNTY 900 Ward Street Martinez, CA 94553	District Attorney MADERA COUNTY 209 West Yosemite Avenue Madera, CA 93637	District Attorney RIVERSIDE COUNTY 3960 Orange Street Riverside, CA 92501	District Attorney SIERRA COUNTY 100 Courthouse Square Downieville, CA 95936
District Attorney DEL NORTE COUNTY 450 H Street, Room 171 Crescent City, CA 95531	District Attorney MARIN COUNTY 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney SACRAMENTO COUNTY 901 G Street Sacramento, CA 95812	District Attorney SISKIYOU COUNTY PO BOX 986 Yreka, CA 96097
District Attorney EL DORADO COUNTY 515 Main Street Placerville, CA 95667	District Attorney MARIPOSA COUNTY PO BOX 730 Mariposa, CA 95338	District Attorney SAN BENITO COUNTY 419 4th Street Hollister, CA 95023	District Attorney SOLANO COUNTY 675 Texas Street, Suite 4500 Fairfield, CA 94533
District Attorney FRESNO COUNTY 2220 Tulare Street, Suite. 1000 Fresno, CA 93721	District Attorney MENDOCINO COUNTY PO BOX 1000 Ukiah, CA 95482	District Attorney SAN BERNARDINO COUNTY 303 W. Third Street San Bernardino, CA 92415	District Attorney SONOMA COUNTY 600 Administration Drive, Room 212J Santa Rosa, CA 95403
District Attorney GLENN COUNTY PO Box 430 Willows, CA 95988	District Attorney MERCED COUNTY 550 West Main Street Merced, CA 95340	District Attorney SAN DIEGO COUNTY 330 W. Broadway, Suite 1300 San Diego, CA 92101	District Attorney STANISLAUS COUNTY 832 12th Street, Suite 300 Modesto, CA 95353
District Attorney HUMBOLDT COUNTY 825 5th Street Eureka, CA 95501	District Attorney MODOC COUNTY 204 S. Court Street, Room 202 Alturas, CA 96101	District Attorney SAN FRANCISCO COUNTY 880 Bryant Street, Third Floor San Francisco, CA 94103	District Attorney SUTTER COUNTY 446 Second Street, Suite 102 Yuba City, CA 95991
District Attorney IMPERIAL COUNTY 940 West Main Street, Suite. 102 El Centro, CA 92243	District Attorney MONO COUNTY PO BOX 2053 Mammoth Lakes, CA 93546	District Attorney SAN JOAQUIN COUNTY PO BOX 990 Stockton, CA 95202	District Attorney TEHAMA COUNTY PO BOX 519 Red Bluff, CA 96080
District Attorney TULARE COUNTY 221 South Mooney Blvd., Suite 224 Visalia, CA 93291	District Attorney VENTURA COUNTY 800 South Victoria Avenue Ventura, CA 93009	District Attorney YUBA COUNTY 215 Fifth Street, Suite. 152 Marysville, CA 95901	District Attorney TRINITY COUNTY PO BOX 310 Weaverville, CA 96093
District Attorney TUOLUMNE COUNTY 423 No. Washington Street Sonora, CA 95370	District Attorney YOLO COUNTY 301 Second Street Woodland, CA 95695	Mike Feuer City Attorney CITY OF LOS ANGELES 200 N. Main Street Los Angeles, CA 90012	Jan Goldsmith City Attorney CITY OF SAN DIEGO 1200 Third Avenue, 3rd Floor San Diego, CA 92101
Richard Doyle City Attorney CITY OF SAN JOSE 200 East Santa Clara Street San Jose, CA 95113	Dennis J. Herrera, City Attorney CITY OF SAN FRANCISCO City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102		