

# NICHOLAS & TOMASEVIC LLP

ATTORNEYS AT LAW

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225 Broadway, 19<sup>th</sup> Floor  
San Diego, CA 92101

February 4, 2021

**Via Certified Mail**

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

Osmos Confectionary Co., Ltd.  
Attn. Legal Department  
51, Geumgang-ro 960beon-gil  
Jinjeop-eup, Namyangju-si, Korea

New Kukje Inc.  
C/O Hae Soo Park (Registered Agent)  
2760 Churchill Dr.  
Hillsborough, CA 94010

Rhee Bros., Inc.  
C/O The Corporation Trust Incorporated  
2405 York Road STE 201  
Lutherville Timonium, MD 21093-2264

Korean Farm, Inc.  
C/O Steven Youngbin Rhee  
5801 Ayala Ave.  
Irwindale, CA 91706

Rhee Bros., Inc.  
Attn. Legal Department  
7461 Coca Cola Drive  
Hanover, MD 21076

**Re: Amended Proposition 65 Notice of Violation**

To Whom It May Concern:

**This notice amends the original notice of violation AG# 2020-03167 dated November 24, 2020. This amendment includes New Kukje Inc. as the retailer.**

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 type of product that is causing exposures in violation of Proposition 65 are sweet potato snacks, including but not limited to the product detailed below:

<u>Product Name</u>	<u>Manufacturer</u>	<u>Distributor/Retailer</u>
Sweet Potato Shaped Snack	Osmos Confectionary Co., Ltd.	The K Market / New Kukje Inc. / Korean Farm, Inc. / Rhee Bros., Inc.

The routes of exposure for the violations include ingestion and inhalation 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 "Jake Schulte". The signature is written in a cursive style with a large initial "J" and a distinct "Schulte" ending.

Jake Schulte

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 A 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, Jake Schulte, 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: February 4, 2021



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Jake Schulte, Attorney at Law

**CERTIFICATE OF SERVICE**

I, Audrey Byrne, 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, 19<sup>th</sup> Floor, San Diego, California 92101.

On February 4, 2021, 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

Osmos Confectionary Co., Ltd.  
Attn. Legal Department  
51, Geumgang-ro 960beon-gil  
Jinjeop-eup, Namyangju-si, Korea

New Kukje Inc.  
C/O Hae Soo Park (Registered Agent)  
2760 Churchill Dr.  
Hillsborough, CA 94010

Rhee Bros., Inc.  
C/O The Corporation Trust Incorporated  
2405 York Road STE 201  
Lutherville Timonium, MD 21093-2264

Korean Farm, Inc.  
C/O Steven Youngbin Rhee  
5801 Ayala Ave.  
Irwindale, CA 91706

Rhee Bros., Inc.  
Attn. Legal Department  
7461 Coca Cola Drive  
Hanover, MD 21076

On February 4, 2021, 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 February 4, 2021, 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 February 4, 2021, 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 February 4, 2021, at San Diego, California



\_\_\_\_\_  
Audrey Byrne

## E-Mail Service List

Stacey Grassini, Deputy District Attorney  
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## Mail Service List

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District Attorney ALPINE COUNTY PO Box 248 Markleeville, CA 96120	District Attorney INYO COUNTY 168 North Edwards Independence, CA 93526	District Attorney MONTEREY COUNTY PO BOX 1131 Salinas, CA 93902	District Attorney SANTA BARBARA COUNTY 1112 Santa Barbara Street Santa Barbara, CA 93101
District Attorney AMADOR COUNTY 708 Court Street, #202 Jackson, CA 95642	District Attorney KERN COUNTY 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney NAPA COUNTY 1127 First Street, Ste. C Napa, CA 94559	District Attorney SANTA CLARA COUNTY 70 West Hedding Street, West Wing San Jose, CA 95110
District Attorney BUTTE COUNTY 25 County Center Drive Admin Buildg Oroville, CA 95965	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 CRUZ COUNTY 701 Ocean Street, Room 200 Santa Cruz, CA 95060
District Attorney CALAVERAS COUNTY 891 Mountain Ranch Road Asan Andreas, CA 95249	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 SHASTA COUNTY 1355 West Street Redding, CA 96001
District Attorney COLUSA COUNTY 346 5th Street, Suite. 101 Colusa, CA 95932	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 SIERRA COUNTY 100 Courthouse Square Downville, CA 95936
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District Attorney FRESNO COUNTY 2220 Tulare Street, Suite. 1000 Fresno, CA 93721	District Attorney MARIPOSA COUNTY PO BOX 730 Mariposa, CA 95338	District Attorney SAN BENITO COUNTY 419 4th Street Hollister, CA 95023	District Attorney STANISLAUS COUNTY 832 12th Street, Suite 300 Modesto, CA 95353
District Attorney GLENN COUNTY PO Box 430 Willows, CA 95988	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 SUTTER COUNTY 446 Second Street, Suite 102 Yuba City, CA 95991
District Attorney HUMBOLDT COUNTY 825 5th Street Eureka, CA 95501	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 TEHAMA COUNTY PO BOX 519 Red Bluff, CA 96080
District Attorney IMPERIAL COUNTY 940 West Main Street, Suite. 102 El Centro, CA 92243	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 TRINITY COUNTY PO BOX 310 Weaverville, CA 96093
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	District Attorney YOLO COUNTY 301 Second Street Woodland, CA 95695	District Attorney SAN LUIS OBISPO COUNTY Courthouse Annex, 4th Floor San Luis Obispo, CA 93408	
	Dennis J. Herrera, City Attorney CITY OF SAN FRANCISCO		