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Jivalagian | Thomassian

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November 24, 2021

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

Re: Violations of Proposition 65 concerning Cookies containing Lead.

Dear Alleged Violators and Public Enforcement Agencies:

Berj Parseghian ("Claimant"), serves this Notice of Violation ("Notice") on Mindful Foods, Inc.; Whole Foods Market California, Inc. (collectively "Violators") pursuant to and in compliance with Proposition 65. KJT Law Group, LLP represents Berj Parseghian (Claimant). This Notice satisfies a prerequisite for Claimant to commence an action against Violators in any Superior Court of California to enforce Proposition 65. The violations addressed by this Notice occurred at numerous locations in each county in California as reflected in the district attorney addresses listed in the attached distribution list. Claimant is serving this Notice upon each person or entity responsible for the alleged violations, the California Attorney General, the district attorney for each county where alleged violations occurred, and the City Attorney for each city with a population (according to the most recent decennial census) of over 750,000 located within counties where the alleged violations occurred.

Claimant is a citizen of the State of California, dedicated to protecting the consumer environment, improving human health, and supporting environmentally sound commercial practices. By sending this notice of violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code §§ 25249.5 *et seq.,* claimant is acting "in the public interest" pursuant to Proposition 65.

This Notice concerns violations of the warning prong of Proposition 65, which states 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 giving clear and reasonable warning to such individual . . ." *Cal. Health & Safety Code* § 25249.6.

Pursuant to § 25249.7(d) of the statute, Claimant intends to bring an enforcement action against the Violators sixty (60) days after the effective service of this notice unless 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 Office of Environmental Hazard Assessment, the lead agency designated under the State, is enclosed with the copy of this notice served upon the violators ("Proposition 65: A Summary"). The specific details of the violations that are the subject of this notice are provided below.

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Consumer Product and Chemical(s) Involved

Claimant has discovered that Cookies contains lead. Lead is known to the State of California to cause cancer. "Lead and lead compounds" have been listed as carcinogens since October 1, 1992 and "lead" has been listed as a developmental toxicant for males and females since February 27, 1987. On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

Identifiers for the Cookies include but are not limited to: **"Soozy's Grain Free – Birthday Cake Cookies; UPC #: 8 54640 00737 6.**

This Notice addresses consumer products exposures. A "'[c]onsumer products exposure' is an exposure which results from a person's acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service." Cal. Code Regs. 27 tit. § 25602(b).

Description of Violation

Violators caused consumer product exposures in violation of Proposition 65 by producing or making available Cookies for distribution or sale in California to consumers. The packaging for Cookies (meaning any label or other written, printed or graphic matter affixed to or accompanying the product or its container or wrapper) contains no Proposition 65-compliant warning. Nor did Violator, with regard to Cookies, provide a system of signs, public advertising identifying the system and toll-free information services, or any other system, which provided clear and reasonable warnings. Nor did Violator, with regard to Cookies, provide identification of the product at retail outlets in a manner that provided a warning through shelf labeling, signs, menus, or a combination thereof.

Route of Exposure

Use of the product identified above results in human exposure to lead. The primary route of lead exposure to consumers is through direct ingestion when consumers eat the Cookies. These exposures take place throughout the State of California. No clear and reasonable warning is provided with regards to the carcinogenic and/or reproductive hazard of lead as required by State law.

Duration of Violations

These violations have been occurring every day between since at least November 24, 2020, and every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided with regards to the carcinogenic and/or reproductive hazard of lead as required by State law or until these known toxic chemicals are removed or reduced to allowable levels in the products.

Counsel

The Claimant is represented in connection with this matter by and may only be contacted through:

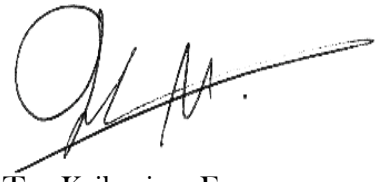
Tro Krikorian, Esq.
KJT Law Group, LLP
230 N. Maryland Avenue, Suite 306, Glendale, CA 91206
Telephone: (818) 507-8525
Email: Tro@KJTLawGroup.com

In keeping with the public interest goals of the statute and the objective of protecting individuals and the community at-large from further toxic exposures, KJT Law Group, LLP is interested in seeking a constructive and immediate resolution of this matter in order to avoid continuing unwarned exposure to listed chemicals.

Proposition 65 requires that notice of intent to sue be given to the violator(s) sixty (60) days before the suit is filed. *Cal. Health & Safety Code* § 25249.7(d)(1). With this letter, Claimant gives notice of the alleged violations to Violator and the appropriate governmental authorities. In absence of any action by the appropriate governmental authorities within sixty (60) calendar days of the sending of this notice (plus ten (10) calendar days because the place of address is beyond the State of California but within the United States), Claimant may file suit. *See Cal. Code Civ. Proc.* § 1013; *Cal. Health & Safety Code* § 25249.7(d)(1); and *Cal. Code Regs.* tit. 27 § 25903(d)(1). Claimant remains open and willing to discussing the possibility of resolving its grievances short of formal litigation.

All communications regarding this notice may be made to Tro Krikorian, Esq. at the above listed firm address and telephone number.

Regards,



Tro Krikorian, Esq.
KJT Law Group, LLP

Attachments:

Certificate of Merit
Supporting Documentation for Certificate of Merit (to Attorney General Only)
Proposition 65: A Summary
Proof of Service (including DA Service List)

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Cookies containing Lead
CERTIFICATE OF MERIT
Health & Safety Code § 25249.5 et. seq.

I, Tro Krikorian, hereby declare:

1) This Certificate of Merit accompanies the attached sixty (60) day notice in which it is alleged the parties identified in the notice have violated Health & Safety Code section 25249.6 by failing to provide clear and reasonable warnings.

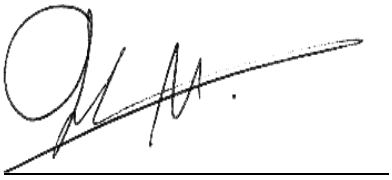
2) I am the attorney for the noticing parties.

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 chemicals that are 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, 2021



Tro Krikorian, Esq.
KJT Law Group, LLP

PROOF 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, over the age of 18 years of age, and am not a party to the action. I am employed in the County of Los Angeles, State of California; my business address is 230 N. Maryland Avenue, Suite 306, Glendale, CA 91206.

On **November 24, 2021** I served the following documents:

60-DAY NOTICE OF VIOLATIONS; 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 the party listed below and depositing it in a US Postal Service Office with the postage fully prepaid for delivery by **Certified Mail**:

Entity Address: **Mindful Foods, Inc.** **Attn: Legal Department** 246 5th Ave New York, NY 10001	**Registered Agent for Service of Process:** **Mindful Foods, Inc.** **Attn: United Corporate Services, Inc.** 874 Walker Road, Suite C Dover, DE 19904
Entity Address: **Whole Foods Market California, Inc.** 5980 Horton Street, Suite 200 Emeryville, CA 94608	**Registered Agent for Service of Process:** **Whole Foods Market California, Inc.** **CT Corporation System** 330 N. Brand Boulevard, Suite 700 Glendale, CA 91203

On **November 24, 2021** I served the following documents:

60-DAY NOTICE OF VIOLATIONS; CERTIFICATE OF MERIT; SUPPORTING DOCUMENTATION FOR CERTIFICATE OF MERIT; THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

on the following parties by uploading the foregoing documents at the webpage listed below:

Office of the California Attorney General Prop 65 Enforcement Reporting 1515 Clay Street, Ste. 2000 Post Office Box 70550 Oakland, California 94612-0550 https://oag.ca.gov/prop65/add-60-day-notice

Executed under penalty of perjury pursuant to the laws of the State of California in Glendale, California on **November 24, 2021.**

Vache Thomassian

KJT LAWGROUP LLP
Jivalagian | Thomassian

PROOF OF SERVICE AFFIDAVIT
CCP 1013(a), CCP 1013(b), and CCP 1013a(3)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

My name is David Birdsall.

I am over the age of 18 and not a party to the related cause(s).

I am employed at DocuCents in the county of Los Angeles, State of California, which is where the mailing occurred.

My business address is: 960 S Village Oaks Dr, Covina, CA 91724, which is where I placed the correspondence described herein for deposit in the United States Postal Service.

I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service.

The following correspondence will be deposited with the United States Postal Service this same day in the ordinary course of business.

Each envelope was sealed and placed for collection and mailing on 11/24/2021, following ordinary business practices.

The exact TITLE of the document(s) served and the name(s) and address(s) of the people or entities being served are listed on the following attached Service List(s). This affidavit may include multiple Service Lists for documents which were mailed to many different parties on unrelated causes as part of the ordinary course of services.

I declare under penalty of perjury under the laws of the State of California that the foregoing and all information contained in the attached Service List(s) is true and correct.

Printed name: David Birdsall

Dated: 11/24/2021

X _____
David Birdsall

Attachments: Service List(s) included as part of this affidavit.

SERVICE LIST

ALAMEDA COUNTY
The Honorable Nancy OMalley
District Attorney
1225 Fallon Street, Room 900
Oakland, CA 94612

ALPINE COUNTY
The Honorable Michael Atwell
District Attorney
P.O. Box 248
Markleeville, CA 96120

AMADOR COUNTY
The Honorable Todd Riebe
District Attorney
708 Court Street
Jackson, CA 95642

BUTTE COUNTY
The Honorable Michael Ramsey
District Attorney
25 County Center Drive
Oroville, CA 95965

CALAVERAS COUNTY
The Honorable Barbara Yook
District Attorney
891 Mountain Ranch Road
San Andreas, CA 95249

COLUSA COUNTY
The Honorable Matthew Beauchamp
District Attorney
310 6th Street
Colusa, CA 95932

CONTRA COSTA COUNTY
The Honorable Diana Becton
District Attorney
900 Ward Street
Martinez, CA 94553

DEL NORTE COUNTY
The Honorable Krishna A. Abrams
District Attorney
450 H Street, Room 171
Crescent City, CA 95531

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The Honorable Vernon Pierson
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Placerville, CA 95667

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The Honorable Lisa Smittcamp
District Attorney
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The Honorable Dwayne Stewart
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The Honorable Maggie Fleming
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Eureka, CA 95501

IMPERIAL COUNTY
The Honorable Gilbert G. Otero
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940 W. Main Street, Suite 102
El Centro, CA 92243

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The Honorable Thomas L. Hardy
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168 N. Edwards
Independence, CA 93526

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The Honorable Cythia Zimmer
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KINGS COUNTY
The Honorable Keith Fagundes
District Attorney
1400 W. Lacey Boulevard
Hanford, CA 93230

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The Honorable Susan Krones
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Lakeport, CA 95453

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The Honorable Melyssah Rios
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Los Angeles, CA 90012

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The Honorable Sally Moreno
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209 W. Yosemite Avenue
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The Honorable Lori Frugoli
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San Rafael, CA 94903

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Mariposa, CA 95338

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The Honorable C. David Eyster
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Alturas, CA 96101

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The Honorable Samuel Kyllo
District Attorney
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Mammoth Lakes, CA 93546

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The Honorable Jeannine Pacioni
District Attorney
1200 Aguajito Rd. Room 301
Monterrey, CA 93940

NAPA COUNTY
The Honorable Allison Haley
District Attorney
1127 First Street, Suite C
Napa, CA 94559

NEVADA COUNTY
The Honorable Clifford Newell
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201 Commercial Street
Nevada City, CA 95959

ORANGE COUNTY
The Honorable Todd Spitzer
District Attorney
300 North Flower St.
Santa Ana, CA 92703

PLACER COUNTY
The Honorable R. Morgan Gire
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10810 Justice Center Drive, Suite 240
Roseville, CA 95678

PLUMAS COUNTY
The Honorable David Hollister
District Attorney
520 Main Street, Room 404
Quincy, CA 95971

RIVERSIDE COUNTY
The Honorable Michael Hestrin
District Attorney
3960 Orange Street
Riverside, CA 92501

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The Honorable Anne Marie Schubert
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901 G Street
Sacramento, CA 95812

SAN BENITO COUNTY
The Honorable Candice Hooper-Mancino
District Attorney
419 4th Street
Hollister, CA 95023

SAN BERNARDINO COUNTY
The Honorable Jason Anderson
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San Bernardino, CA 92415

SAN DIEGO COUNTY
The Honorable Summer Stephan
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330 W. Broadway, Suite 1300
San Diego, CA 92101

SAN FRANCISCO COUNTY
The Honorable Chesa Boudin,
District Attorney
350 Rhode Island Street
North Building, Suite 400N
San Francisco, CA 94103

SAN JOAQUIN COUNTY
The Honorable Tori Verber Salazar
District Attorney
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Stockton, CA 95202

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District Attorney
Courthouse Annex, 4th Floor
San Luis Obispo, CA 93408

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The Honorable Stephen M. Wagstaffe
District Attorney
400 County Center, Third Floor
Redwood City, CA 94063

SANTA BARBARA COUNTY
The Honorable Joyce Dudley
District Attorney
1112 Santa Barbara Street
Santa Barbara, CA 93101

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The Honorable Jeffrey Rosen
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San Jose, CA 95110

SANTA CRUZ COUNTY
The Honorable Jeff Rosell
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701 Ocean Street, Room 200
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The Honorable Stephanie A. Bridgett
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Downieville, CA 95936

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The Honorable Jill Ravitch
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Santa Rosa, CA 95403

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The Honorable Birgit Fladager
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The Honorable Amanda L. Hopper
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The Honorable Donna Daly
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The Honorable Jeffery Reisig
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The Honorable Clint Curry
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Los Angeles, CA 90012

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Sacramento, CA 95814

CITY OF SAN DIEGO
City Attorney's Office
1200 3rd Avenue, Suite 1620
San Diego, CA 92101

CITY OF SAN FRANCISCO
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1 Dr. Carlton B Goodlett Place
San Francisco, CA 94102

CITY OF SAN JOSE
City Attorney's Office
200 E. Santa Clara Street, 16th Floor
San Jose, CA 95113

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City Attorney's Office
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Oakland, CA 94612