

AVJUSTICE LAW FIRM

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February 8, 2022

NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 *ET SEQ.* (PROPOSITION 65)

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

We represent Keep America Safe and Beautiful ("KASB"), 13891 Yockey Street, Garden Grove, California 92844. KASB's Executive Director is Ngoc-Bich Hoang Vo. KASB is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

KASB has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 et seq., with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violators identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Health and Safety Code Section 25249.7(d), KASB intends to pursue a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

General Information about Proposition 65.

A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with this letter served to the alleged Violators identified below.

Alleged Violators.

The names of the person/company covered by this notice that violated Proposition 65 (hereinafter the "Violators") are:

Chocolate Delivery Systems DBA ChocoMaker
1800 Elmwood Ave.
Buffalo, NY 14207

Bed Bath & Beyond
650 Liberty Ave.
Union, New Jersey 07083

Consumer Products and Listed Chemical.

The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are: ChocoMaker Dark Chocolate Flavored Fountain Formula Dipping Candy.

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.

It should be noted that KASB may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

Route of Exposure.

The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

Approximate Time Period of Violations.

Ongoing violations have occurred every day since at least August 20, 2021, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, KASB is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time-consuming litigation.

KASB has retained us as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated on the letterhead or at padilla@avjustice.com**

Sincerely,



Arturo Padilla

Attachments:

Certificate of Merit

 Certificate of Service

 OEHHA Summary (to Alleged Violators only)

 Factual Information in Support of Certificate of Merit (to AG only)

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February 8, 2022

CERTIFICATE OF MERIT

**Re: Keep America Safe and Beautiful Notice of Proposition 65 Violation by
Chocolate Delivery Systems DBA Choco Maker and Bed Bath & Beyond**

I, Arturo Padilla, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the parties identified in the notice violated California Health & 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 have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.
4. I have reviewed the laboratory testing results for the chemical subject to the Notice and rely on these results. The testing was conducted by a reputable accredited testing laboratory and by experienced scientists with doctoral and other degrees in relevant sciences. The facts, studies and other data derived through this investigation overwhelmingly demonstrate that the alleged violators have exposed persons to the listed chemical that is the subject of the Notice and is known to the State of California to cause reproductive and/or developmental harm, and/or cancer.
5. 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 that the information did not prove that the alleged Violators will be able to establish any of the affirmative defenses set forth in the statute.
6. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identities or persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: February 8, 2022



Arturo Padilla
padilla@avjustice.com

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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 of age. My business address is 714 W. Olympic Blvd., Suite 450, Los Angeles, CA 90015. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Los Angeles, California.

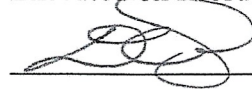
On February 8, 2022 between 8:00 a.m. and 5:00 p.m. Pacific Standard Time, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified First Class Mail:

Current President or CEO of Chocolate Delivery Systems DBA ChocoMaker
1800 Elmwood Ave.
Buffalo, NY 14207

Current President or CEO of Bed Bath & Beyond
650 Liberty Ave.
Union, New Jersey 07083

Current President or CEO of Bed Bath & Beyond
c/o CT Corporation System
330 N. Brand Blvd., Suite 700
Glendale, CA 91203

Executed on February 8, 2022, in Los Angeles, California.



Diane Quevedo

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

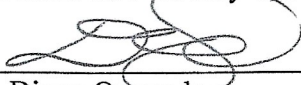
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On February 8, 2022 between 8:00 a.m. and 5:00 p.m. Pacific Standard Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT INCLUDING A SUMMARY OF CONFIDENTIAL FACTUAL INFORMATION; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-dav-notice>:

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Oakland, CA 94612-0550

Executed on February 8, 2022, in Los Angeles, California



Diane Quevedo

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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 of age. My business address is 714 W. Olympic Blvd., Suite 450, Los Angeles, CA 90015. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Los Angeles, California.

On February 8, 2022 between 8:00 a.m. and 5:00 p.m. Pacific Standard Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Nancy O'Malley, District Attorney Alameda County 7677 Oakport Street, Suite 650 Oakland, CA 94621 CEPDProp65@acgov.org	Barbara Yook, District Attorney Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249 Prop65Env@co.calaveras.ca.us
Stacey Grassini, Deputy District Attorney Contra Costa County 900 Ward Street Martinez, CA 94553 sgrassini@contracostada.org	Thomas L. Hardy, District Attorney Inyo County 168 North Edwards Street Independence, CA 93526 inyoda@inyocounty.us
Michelle Latimer, Program Coordinator Lassen County 220 S. Lassen Street Susanville, CA 96130 mlatimer@co.lassen.ca.us	Dije Ndreu, Deputy District Attorney Monterey County 1200 Aguajito Road Monterey, CA 93940 Prop65DA@co.monterey.ca.us
Allison Haley, District Attorney Napa County 1127 First Street, Suite C Napa, CA 94559 CEPD@countyofnapa.org	Michael Hestrin, District Attorney Riverside County 3072 Orange Street Riverside, CA 92501 Prop65@rivcoda.org
Anne Marie Schubert, District Attorney Sacramento County 901 G Street Sacramento, CA 95814 Prop65@sacda.org	Mark Ankcorn, Deputy City Attorney San Diego City Attorney 1200 Third Avenue San Diego, CA 92101 CityAttyProp65@sandiego.gov

<p>Gregory Alker, Assistant District Attorney San Francisco County 732 Brannan Street San Francisco, CA 94103 gregory.alker@sfgov.org</p>	<p>Valerie Lopez, Deputy City Attorney San Francisco City Attorney 1390 Market Street, 7th Floor San Francisco, CA 94102 Valerie.Lopez@sfcityatty.org</p>
<p>Tori Verber Salazar, District Attorney San Joaquin County 222 E. Weber Avenue, Room 202 Stockton, CA 95202 DAConsumer.Environmental@sjcda.org</p>	<p>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</p>
<p>Christopher Dalbey, Deputy District Attorney Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101 DAProp65@co.santa-barbara.ca.us</p>	<p>Bud Porter, Supervising Deputy District Attorney Santa Clara County 70 W Hedding St San Jose, CA 95110 EPU@da.sccgov.org</p>
<p>Stephan R. Passalacqua, District Attorney Sonoma County 600 Administration Dr Sonoma, CA 95403 jbarnes@sonoma-county.org</p>	<p>Phillip J. Cline, District Attorney Tulare County 221 S Mooney Blvd Visalia, CA 95370 Prop65@co.tulare.ca.us</p>
<p>Gregory D. Totten, District Attorney Ventura County 800 S Victoria Ave Ventura, CA 93009 daspecialops@ventura.org</p>	<p>Jeff W. Reisig, District Attorney Yolo County 30 I Second Street Woodland, CA 95695 cfepd@yolocounty.org</p>

Executed on February 8, 2022, in Los Angeles, California



Diane Quevedo

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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 of age. My business address is 714 W. Olympic Blvd., Suite 450, Los Angeles, CA 90015. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Los Angeles, California.


On February 8, 2022 between 8:00 a.m. and 5:00 p.m. Pacific Standard Time, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each parties 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 U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail

Service List

District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, Shasta County 1355 West Street Redding, CA 96001
District Attorney, Colusa County 346 Fifth Street Suite IOI Colusa, CA 95932	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Sierra County 100 Courthouse Square, 2 Floor Downieville, CA 95936
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097
District Attorney, El Dorado County 778 Pacific St Placerville, CA 95667	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Sutter County 463 2nd Street Yuba City, CA 95991
District Attorney, Humboldt County 825 5th Street 4,, Floor Eureka, CA 95501	District Attorney, Orange County 300 N. Flower Street Santa Ana, CA 92703	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093

District Attorney, Kern County 1215 Tmxtun Avenue Bakersfield, CA 93301	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	Disllict Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	Distiiict Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
DistJict Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012	San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012		

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Diane Quevedo