

August 17, 2022

Via Certified Mail

B&G Foods North America, Inc.
c/o Erin Upchurch
1325 J St STE 1550
Sacramento, CA 95814

Ralphs Grocery Company
c/o CSC - Lawyers Incorporating Service
2710 Gateway Oaks Drive, STE 150 N
Sacramento, CA 95833

Re: Amended Proposition 65 Notice of Violation

To Whom It May Concern:

This notice amends the first amended notice AG #2019-00765 dated April 22, 2019. This amendment attaches the relevant laboratory testing results and analysis.

We represent Kim Embry, a citizen of 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 is detailed below:

	<u>Product Name</u>	<u>Manufacturer</u>	<u>Distributor/Retailer</u>	<u>Item Number/SKU</u>
1.	Snack Well's Devil's Food Fat Free Cookie Cakes	B&G Foods North America, Inc.	Ralphs Grocery Company	UPC: 819898019007

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 March 2019, 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

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Notice of Proposition 65 Violation

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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,



Noam Glick

Enclosures

Noam Glick
Glick Law Group
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email: noam@glicklawgroup.com

April 12, 2019

Dear Mr. Glick,

This letter is in response to your request for my opinion on the potential for human overexposure to acrylamide based on the amount measured in a food product purchased in the State of California. The product in question is Snack Well's Devil's Food Fat Free Cookie Cakes. After purchase, the product was sent to IEH Analytical Laboratory in Seattle, WA. IEH is a commercial laboratory that holds accreditation by multiple accrediting bodies; for this analysis they used a modified version of the method developed by scientists at the U.S. Food and Drug Administration, which measures acrylamide in foods via liquid chromatography-tandem mass spectrometry (LC-MS/MS).¹ As part of this method the laboratory analysis included steps to assess and maintain quality control of the method (sample chain of custody, method blanks, spiked standards, recovery tests, etc.). **The analyzing laboratory reported high concentrations of acrylamide which appears on the California Prop 65 list of chemicals known by the State of California to be carcinogenic. The acrylamide content of the product was 643 parts per billion (ppb), equal to 0.643 microgram per gram of food (µg/g).**

Acrylamide is a carcinogen that can form as reducing sugars react with free asparagine when carbohydrate-rich foods are processed at high temperatures (such as cooking, frying, roasting, and baking), primarily through what is known as the Maillard reaction.²⁻⁴ Direct ingestion is the primary route of exposure to acrylamide from food products. It is my opinion that consumption of this particular food product could result in exposure well above the No Significant Risk Level (NSRL) for carcinogens set by the state of California, which for acrylamide is set at 0.2 µg per day. *Since this product contains 0.643 µg/g acrylamide, the NSRL would be exceeded when consuming just 0.3 grams (0.01 ounces) of the product. The serving size listed on the package is 16 grams. Thus, one would ingest 10.3 µg of acrylamide when consuming a single serving of the product, which is more than 50 times greater than the NSRL.*

In conclusion, given the amount of acrylamide measured in the product and typical serving sizes, exposures in excess of the NSRL are likely to occur. Please let me know if you have further questions.

Sincerely,



John Meeker, MS, ScD, CIH

References

1. Roach JA, Andrzejewski D, Gay ML, Nortrup D, Musser SM. Rugged LC-MS/MS survey analysis for acrylamide in foods. *J Agric Food Chem*, 2003; 51(26):7547-7554.
2. Arvanitoyannis JS, Dionisopoulou N. Acrylamide: formation, occurrence, in food products, detection methods, and legislation. *Crit Rev Food Sci Nutr*, 2014; 54(6):708-733.
3. Pedreschi F, Mariotti MS, Granby K. Current issues in dietary acrylamide: formation, mitigation and risk assessment. *J Sci Food Agric*, 2014; 94(1):9-20.
4. Xu Y, Cui B, Ran R, Liu Y, Chen H, Kai G, Shi J. Risk assessment, formation, and mitigation of dietary acrylamide: current status and future prospects. *Food Chem Toxicol*, 2014; 69:1-12.



IEH
**Laboratories &
 Consulting Group**

CERTIFICATE OF ANALYSIS

Nicholas & Tomasevic, LLP

Contact:Lindsay Beatty
 225 Broadway, Suite 1900
 San Diego, CA 92101
 Phone:619-325-0492

IEH Laboratories & Consulting Group

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 Phone:(206) 632-2715 Fax:(206) 632-2417
 www.iehinc.com

TRADE SECRET / CONFIDENTIAL COMMERCIAL INFORMATION

WO: 1705360				Samples Received: 4/1/2019		Report Date: 4/4/2019		Report No: IAL-5532	
Lab Sample ID		Client Sample ID		Matrix		Acrylamide (ppb)			
1705360-16301		8		SW's FF Cookie Cakes		643			
Test Method: Acrylamide = Acrylamide by LC-MS/MS; Method Reference: J. Agric. Food Chem. 54.19 (2006): 7001-7008; Reporting Limit = 10 ppb									

UNLESS OTHERWISE NOTED, ALL SAMPLES WERE RECEIVED IN ACCEPTABLE CONDITION. THE RESULT(S) IN THIS REPORT RELATE ONLY TO THE PORTION OF THE SAMPLE(S) TESTED. THIS REPORT DOES NOT CONSTITUTE A RELEASE OF PRODUCT FOR CONSUMPTION. THIS REPORT SHALL NOT BE REPRODUCED EXCEPT IN FULL, WITHOUT WRITTEN APPROVAL OF THE LABORATORY. THIS DOCUMENT CONTAINS CONFIDENTIAL COMMERCIAL INFORMATION PURSUANT TO 5 U.S.C. SEC. 552(b)(4).

Authorized Analyst: Zach Gottschalk

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: August 17, 2022



Noam Glick, Attorney at Law

CERTIFICATE OF SERVICE

I, Jordyn Naylor, 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, 19th Floor, San Diego, California 92101.

On August 17, 2022 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

B&G Foods North America, Inc.
c/o Erin Upchurch
1325 J St STE 1550
Sacramento, CA 95814

Ralphs Grocery Company
c/o CSC - Lawyers Incorporating Service
2710 Gateway Oaks Drive, STE 150 N
Sacramento, CA 95833

On August 17, 2022, 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 August 17, 2022 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.

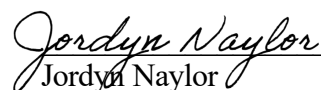
See Attached Service List

On August 17, 2022, 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 August 17, 2022, at San Diego, California.



Jordyn Naylor

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

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The Honorable Gilbert Otero Imperial County District Attorney 940 West Main Street, Suite 102 El Centro, CA 92243	The Honorable Tony Rackauckas Orange County District Attorney 401 Civic Center Drive West Santa Ana, CA 92701	The Honorable James Kirk Andrus Siskiyou County District Attorney P.O. Box 986 Yreka, CA 96097	Office of the California Attorney General Proposition 85 Enforcement Reporting ATTN: Prop 85 Coordinator 1515 Clay Street, Suite 2000 Oakland, CA 94612-0550
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