

April 10, 2023

60-DAY NOTICE OF VIOLATION OF CALIFORNIA SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT

Dear Alleged Violators and Appropriate Enforcement Agencies¹:

This office represents Ramy Eden (“Claimant”) who serves this Notice of Violation (“Notice”) pursuant to California Health & Safety Code section 25249.7(d). This Notice serves to inform you that the Alleged Violators identified below (“Alleged Violators”) are in violation of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”) codified at Cal. Health & Safety Code § 25249.5, *et seq.*

Claimant has identified violations of Proposition 65 with respect to the consumer product identified below (“Product”). In violation of Cal. Health & Safety Code § 25249.6, the Product exposes individuals to cadmium (referred to herein as “cadmium” or the “Listed Chemical”), which is known to the State of California to cause *inter alia*, developmental toxicity and male reproductive toxicity, without first giving a clear and reasonable warning of such exposure. Without these warnings, California citizens lack the information necessary to make informed decisions as to whether and/or how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable exposure to and/or use of the Product.

Claimant is a citizen of the State of California who is acting in the interest of the general public to promote awareness of exposures to toxic chemicals from use of consumer products sold in California and to improve human health and the environment by reducing hazardous substances. Claimant intends to bring a private enforcement action, pursuant to Cal. Health & Safety Code §25249.7(d), to address these violations. Claimant is represented by the undersigned and may be contacted through the undersigned at the telephone number and address set forth in the letterhead above.

Description of Violations:

Alleged Violators: The Alleged Violators that are the subject of this Notice are those identified in Exhibit 1 below.

Time Period of Exposure: Violations have been occurring since at least April 10, 2020 and are continuing to this day.

Listed Chemical: Cadmium, which is listed by the State of California under Prop. 65 as being known to cause *inter alia*, developmental toxicity and male reproductive toxicity.

Product: The Product that is the subject of this Notice is identified in Exhibit 1 below.

Description of Exposure: The use of the Product results in human exposure to cadmium. The primary route of exposure to consumers is through direct ingestion when consumers eat the Product. These exposures take place throughout the State of California and no clear or reasonable warning regarding such exposures is provided.

Prop. 65 Information:

For the reference of the Alleged Violators, a copy of the Office of Environmental Health Hazard Assessment’s *The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary* is being provided to the Alleged Violators.

Evidence Preservation Request to Alleged Violators:

Alleged Violators are hereby requested to preserve any and all evidence relating to the violations described herein. This includes, without limitation, preserving exemplars of the Product and any accompanying warning materials and all communications regarding warning materials concerning the Product. For any Alleged Violator who is a “Retail Seller”² this also includes, without limitation, documenting (through photography and/or

¹ The public enforcement agencies are those public agencies identified in the attached proof of service.

² “Retail Seller” has the same meaning as that set forth in California Code of Regulations Title 27, section 25600.1(l).

video recording) the **present** existence, content, and location of all warning materials—including labels, shelf signs, tags, and Internet warning language—in their retail stores and websites that the Retail Seller contends provides consumers with the “clear and reasonable” warning required by Health & Safety Code section 25249.6 regarding the Product (and preserving any historical depictions of such warning materials). The failure to preserve evidence regarding the violations may result in sanctions and other penalties.

Request for Information Concerning Source of the Product

Pursuant to California Code of Regulations Title 27, section 25600.2, any Alleged Violator who is a “Retail Seller” is hereby requested to promptly provide the name and contact information for the manufacturer, producer, packager, importer, supplier, and distributor of the Product.

Claims Resolution:

To address the above-described violations, Claimant—through this law firm—intends to bring a private enforcement action against the Alleged Violators pursuant to Cal. Health & Safety Code § 25249.7(d). However, consistent with the public interest goals of Proposition 65 and the desire to have these violations of California law quickly rectified, Claimant is interested in attempting to reach an efficient and equitable resolution of these violations without protracted litigation.

Should the Alleged Violators be interested in discussing such a resolution, I welcome them to contact me at jcharo@charolaw.com or at the phone number or mailing address listed in the letterhead above. Please note that Claimant is represented in connection with this matter and **may only be contacted through the undersigned**.

Respectfully,

Jarrett S. Charo

JARRETT S. CHARO, ESQ.

Enclosures: Certificate of Merit; Proof of Service; *The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary*

EXHIBIT 1

Name of Alleged Violators	Product	Non-Exclusive Examples of Style, SKU, UPC, or Further Description of Product ³
Sunbutter LLC; Whole Foods Market California, Inc.	Sunbutter organic on the go sunflower butter	737539194107

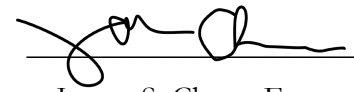
³ The examples of the Product are not intended to be an exhaustive listing of each specific unit constituting the offending Product. Rather, they are provided to assist the recipients in identifying other units that comprise the offending Product.

Certificate of Merit

I, Jarrett S. Charo, hereby declare:

- (1) This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the parties identified in the notices have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
- (2) I am the 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: April 10, 2023


Jarrett S. Charo, Esq.

PROOF OF SERVICE BY CERTIFIED MAIL

I declare that I am a citizen of the United States and a resident of the County of Placer. I am over the age of eighteen (18) and not a party to the within action. My business address is P.O. Box 740, Penryn, CA 95663.

- On April 10, 2023, I caused the following documents to be served, 60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act; Certificate of Merit; The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary, as indicated on the attached service list:

Sunbutter LLC
c/o C T Corporation System, Agent
120 W. Sweet Ave.
Bismark, ND 58504

Whole Foods Market California, Inc.
c/o Keith Manbeck, CEO
PO Box 684786
Austin, TX 78768-4786

Whole Foods Market California, Inc.
c/o CT Corporation System, Agent
330 N. Brand Blvd., Suite 700
Glendale, CA 91203

BY CERTIFIED MAIL – by placing a true and correct copy of the original thereof enclosed in a sealed envelope with postage thereon fully prepaid in the firm’s outgoing mail. A signed return receipt was requested. I am “readily familiar” with the firm’s practice of collecting and processing correspondence for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business.

BY HAND DELIVERY – by delivering by hand and leaving a true copy addressed to the person at the address shown above.

BY EMAIL– by causing a true copy thereof to be electronically transmitted to the parties, by using their email address as indicated above.

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

Executed on April 10, 2023, at Penryn, California



Emilee Funk

PROOF OF SERVICE BY U.S. MAIL

I declare that I am a citizen of the United States and a resident of the County of Placer. I am over the age of eighteen (18) and not a party to the within action. My business address is P.O. Box 740, Penryn, CA 95663.

- On April 10, 2023, I caused the following documents to be served, 60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act; Certificate of Merit, as indicated below:
-

SEE ATTACHED SERVICE LIST

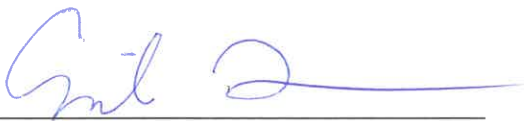
BY MAIL – by placing a true and correct copy of the original thereof enclosed in a sealed envelope with postage thereon fully prepaid in the firm’s outgoing mail. I am “readily familiar” with the firm’s practice of collecting and processing correspondence for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business.

BY HAND DELIVERY – by delivering by hand and leaving a true copy addressed to the person at the address shown above.

BY EMAIL– by causing a true copy thereof to be electronically transmitted to the parties, by using their email address as indicated above.

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

Executed on April 10, 2023, at Penryn, California



Emilee Funk

Public Agency Service List (U.S. Mail)

District Attorney,
ALAMEDA COUNTY
1225 Fallon St.
Oakland, CA 94612

District Attorney,
ALPINE COUNTY
P.O. Box 248
Markleeville, CA 96120

District Attorney,
AMADOR COUNTY
708 Court Street, #202
Jackson, CA 95642

District Attorney,
BUTTE COUNTY
25 County Center Drive
Administration Building
Oroville, CA 95965

District Attorney,
CALAVERAS COUNTY
891 Mountain Ranch Road
San Andreas, CA 95249

District Attorney,
CONTRA COSTA COUNTY
900 Ward Street
Martinez, CA 94553

District Attorney, COLUSA
COUNTY
346 5th Street, Suite 101
Colusa, CA 95932

District Attorney,
DEL NORTE COUNTY
450 H Street, Room 171 Crescent
City, CA 95531

District Attorney,
EL DORADO COUNTY
778 Pacific Street
Placerville, CA 95667

District Attorney, FRESNO
COUNTY
2220 Tulare Street, Suite 1000
Fresno, CA 93721

District Attorney,
GLENN COUNTY
P.O. Box 430
Willows, CA 95988

District Attorney,
HUMBOLDT COUNTY
825 5th Street
Eureka, CA 95501

District Attorney,
IMPERIAL COUNTY
940 West Main Street,
Suite 102
El Centro, CA 92243

District Attorney,
INYO COUNTY
P.O. Drawer D
Independence, CA 93526

District Attorney,
KERN COUNTY
1215 Truxtun Avenue
Bakersfield, CA 93301

District Attorney,
KINGS COUNTY
1400 West Lacey Blvd.
Hanford, CA 93230

District Attorney,
LAKE COUNTY
255 N. Forbes Street
Lakeport, CA 95453

District Attorney,
LASSEN COUNTY
2950 Riverside Drive, #102
Susanville, CA 96130

District Attorney,
LOS ANGELES COUNTY
211 W. Temple Street
Suite 1200
Los Angeles, CA 90012

District Attorney,
MADERA COUNTY
209 West Yosemite Avenue
Madera, CA 93637

District Attorney,
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3501 Civic Center Drive
Room 130
San Rafael, CA 94903

District Attorney,
MARIPOSA COUNTY
P.O. Box 730
Mariposa, CA 95338

District Attorney,
MENDOCINO COUNTY
P.O. Box 1000
Ukiah, CA 95482

District Attorney,
MERCED COUNTY
550 West Main Street
Merced, CA 95340

District Attorney
MODOC COUNTY
204 S. Court Street,
Room 202
Alturas, CA 96101

District Attorney,
MONO COUNTY
P.O. Box 2053
Mammoth Lakes, CA 93546

District Attorney,
MONTEREY COUNTY
142 W. Alisal Street
Suite A
Salinas, California 93901

District Attorney,
NAPA COUNTY
1195 Third Street
Napa, CA 94559

District Attorney,
NEVADA COUNTY
201 Commercial Street
Nevada City, CA 95959

District Attorney,
ORANGE COUNTY
300 North Flower St.
Santa Ana, CA 92703

District Attorney,
PLACER COUNTY
10810 Justice Center Drive
Roseville, CA 95678

District Attorney,
PLUMAS COUNTY
520 Main Street,
Room 404
Quincy, CA 95971

District Attorney,
RIVERSIDE COUNTY
3960 Orange Street
Riverside, CA 92501

District Attorney,
SACRAMENTO COUNTY
901 G Street
Sacramento, CA 95814

District Attorney,
SAN BENITO COUNTY
419 4th Street
Hollister, CA 95023

District Attorney,
SAN BERNARDINO COUNTY
303 W. 3rd Street
San Bernardino, CA 92415

District Attorney,
SAN DIEGO COUNTY
330 W. Broadway
San Diego, CA 92101

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

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P O Box 990
Stockton, CA 95201

District Attorney,
SAN LUIS OBISPO
1055 Monterey Street
San Luis Obispo, CA 93408

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Redwood City, CA 94063

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SANTA BARBARA COUNTY
1112 Santa Barbara Street
Santa Barbara, CA. 93101

District Attorney,
SANTA CLARA COUNTY
70 West Hedding Street
San Jose, CA 95110

District Attorney,
SANTA CRUZ COUNTY
701 Ocean Street
Rm. 200
Santa Cruz, CA 95060

District Attorney,
SHASTA COUNTY
1355 West Street
Redding, CA 96001

District Attorney,
SIERRA COUNTY
100 Courthouse Square
Downieville, CA 95936

District Attorney,
SISKIYOU COUNTY
P.O. Box 986
Yreka, CA 96097

District Attorney,
SOLANO COUNTY
675 Texas Street, Suite 4500
Fairfield, CA 94533

District Attorney,
SONOMA COUNTY
600 Administration Drive
Room 212 J
Santa Rosa, CA 95403

District Attorney,
STANISLAUS COUNTY
832 12th Street, Suite 300
Modesto, CA 95353

District Attorney,
SUTTER COUNTY
463 2nd Street
Suite 102
Yuba City, CA 95991

District Attorney,
TEHAMA COUNTY
P.O. Box 519
Red Bluff, CA 96080

District Attorney,
TRINITY COUNTY
P.O. Box 310
Weaverville, CA 96093

District Attorney,
TULARE COUNTY
221 S. Mooney Blvd
Room 224
Visalia, CA 93291

District Attorney,
TUOLUMNE COUNTY
423 N. Washington Street
Sonora, CA 95370

District Attorney,
VENTURA COUNTY
800 S. Victoria Avenue
Suite 314
Ventura, CA 93009

District Attorney,
YOLO COUNTY
301 Second Street
Woodland, CA 95695

District Attorney,
YUBA COUNTY
215 Fifth Street, Suite 152
Marysville, CA 95901

Los Angeles City Attorney
200 N. Main St
Suite 1800
Los Angeles, CA 90012

Sacramento City Attorney
915 I Street
Sacramento, CA 95814

San Diego City Attorney
1200 Third Ave.
#1620
San Diego, CA 92101

San Francisco City Attorney
City Hall, Room 234
1 Dr. Carlton B. Doodlett Pl.
San Francisco, CA 94102

San Jose City Attorney
200 E. Santa Clara St.
16th Floor
San Jose, CA 95113

Proof of Service via Electronic Upload

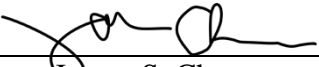
I declare that I am a citizen of the United States and a resident of the County of San Diego. I am over the age of eighteen (18) and not a party to the within action. My business address is 4079 Governor Dr., San Diego, CA, 92122.

On April 10, 2023, I caused the following documents to be electronically served upon the Office of the Attorney General, State of California, via upload to the Office of the Attorney General's website at the following web address: <https://oag.ca.gov/prop65/add-60-day-notice>:

- Amended 60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act; and
- Certificate of Merit, with confidential attachment.

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

Executed on April 10, 2023, at San Diego, California.



Jarrett S. Charo