

60-DAY NOTICE OF VIOLATION

SENT IN COMPLIANCE WITH
Cal. Health & Safety Code § 25249.5, et seq.
("Proposition 65")

DATE: June 5, 2023

TO: **Nissin Foods (U.S.A.) Company, Inc.; Nissin Food USA; Nissin Foods USA Co Inc. Nissin Foods Holdings Co., Ltd.; Nissin Food Products Co., Ltd.**
California Attorney General's Office;
District Attorney's Office for All California Counties; and
City Attorneys for San Francisco, San Diego, San Jose, Sacramento, and Los Angeles

FROM: Consumer Rights Advocates, LLC

I. INTRODUCTION

Consumer Rights Advocates, LLC ("CRA") is a private enforcer acting in the public interest with the sole mission of protecting the public from environmental health hazards and toxic exposures by bringing an enforcement action to eliminate or reduce the presence of carcinogen and hazardous substances in food and consumer products sold in California, as well as encouraging corporate responsibility.

CRA has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified in California Health & Safety Code § 25249.5 et seq., with respect to the products identified below. CRA serves this Notice of Violation upon NISSIN FOODS (U.S.A.) COMPANY, INC.; NISSIN FOOD USA; NISSIN FOODS USA CO INC.; NISSIN FOODS HOLDINGS CO., LTD.; NISSIN FOOD PRODUCTS CO., LTD. ("Violators"), and the appropriate public enforcement agencies pursuant to California Health & Safety Code § 25249.6 et seq. CRA intends to pursue a private enforcement action in the public interest 60 days after the effective service of this Notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify this violation.

This Notice consists of a summary of Proposition 65, a statement of violation, the number and duration of the violations, the product's information, carcinogen or toxin causing the exposure ("Listed Chemical"), routes of exposure, type of harm resulting from exposure to the Listed Chemical, and demand for preservation of evidence.

Product Exposure:	See Sections VI. and VII.
Listed Chemical:	Lead
Routes of Exposure:	Ingestion and Dermal Absorption
Type of Harm:	Birth Defect and other Reproductive Harm

II. PROPOSITION 65 INFORMATION – SUMMARY

A summary of Proposition 65 and its implementing regulations, prepared by the Office of Environmental Health Hazard Assessment, the lead agency designated under Proposition 65, is enclosed as Appendix A and served on the Violators. For more information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health Hazard Assessment's ("OEHHA") Proposition 65 Implementation Office at (916) 445-6900.

III. STATEMENT OF VIOLATIONS

The Exemplar Product that is causing consumer exposure in violation of Proposition 65 is listed under section VI ("Covered Products"). The specific toxin causing the exposure is set forth in section VII. Exposures to the Listed Chemical from the ordinary and foreseeable use of the Covered Products have been occurring without the "clear and reasonable warning" required by Proposition 65. Without proper warnings regarding the toxic effects and implications of exposure to the Listed Chemical, California citizens lack the information necessary to make informed decisions as to whether and how to eliminate or reduce the risk of being exposed to the Listed Chemical.

The Violators knowingly disregarded this toxic chemical exposure and knowingly and intentionally continued to place this product in the stream of commerce in California, thereby exposing consumers within the State of California to the Listed Chemical, a chemical known to the State of California to cause cancer, birth defects, and other reproductive harm, without first giving clear and reasonable warning of this exposure. The Violators failed to provide a clear and reasonable warning to consumers that this product exposes consumers to the Listed Chemical and the type of harm that may ensue.

IV. NUMBER AND DURATION OF VIOLATIONS

Each and every sale of a Covered Product to a consumer in California without a clear and reasonable warning is a violation, including transactions made over-the-counter, through the internet, or via catalog. These violations have been occurring since at least June 5, 2022, as well as every day since the Covered Products were first introduced and sold in the State of California. These violations will continue until “clear and reasonable warnings” are provided prior to exposing California consumers to the Listed Chemicals.

V. ROUTE OF EXPOSURE

California consumers are exposed to the Listed Chemical through the ordinary and foreseeable use and consumption of the Covered Product. Consumers ingest the Listed Chemical by eating the Covered Product or when they touch and handle the Covered Products, transfer the Listed Chemical from the Covered Products onto their fingers and hands, and transfer the Listed Chemical from their fingers and hands to their mouths through hand-to-mouth activities that may continue to occur for a significant period after contact with the Covered Products.

By way of example, exposures occur when California citizens use the Covered Product as an ingredient, eat, sample, or otherwise ingest the product. These acts cause consumers to be exposed to the Listed Chemical through the routine consumption of all or a portion of the product containing the Listed Chemical. People likely to be exposed include both children and adults, including women of childbearing age.

VI. COVERED PRODUCTS

A specific example of Covered Products recently purchased and witnessed as being available for purchase in California (the “Exemplar Product”) is identified below. Based on publicly available information, the retailers, distributors, importers, and/or manufacturers of the Exemplar Product are also provided.

The Exemplar Product is identified for the Notice Recipients’ benefit to assist in their investigation of the allegations set forth in this Notice. The Exemplar Product is not meant to be an exhaustive or comprehensive identification of products falling within the specific category of the Covered Products. The Exemplar Product is a representative of a class of products called “UFO NOODLES.” The CRA’s position is that the Violators are obligated to conduct a good-faith investigation into other products falling within the category of the Covered Products, including variations thereof, which have been manufactured, imported, distributed, shipped, stored, or sold in the State of California.

<u>Exemplar Product</u>	<u>Violator(s)</u>
UFO Nissin Noodles UPC No. 4-902105271537	NISSIN FOODS (U.S.A.) COMPANY, INC.; NISSIN FOOD USA; NISSIN FOODS USA CO INC.; NISSIN FOODS HOLDINGS CO., LTD.; NISSIN FOOD PRODUCTS CO., LTD.

VII. EXHIBIT A – LISTED CHEMICAL

<u>Product Category</u>	<u>Toxicant(s)</u>
Noodles Nissin Brand Product of Japan	Lead

VIII. RESOLUTION OF NOTICED CLAIMS

Consistent with the goals of Proposition 65 and a desire to have these violations corrected, CRA is interested in seeking a resolution of this matter that includes a binding written agreement by the Violators to: (1) recall any products already sold or undertake best efforts to ensure that the requisite health hazard warnings are provided to those who have received such products; (2) reformulate the Covered Product so as to eliminate further exposures to the Covered Chemical(s) or provide appropriate warnings on the labels of these products; and (3) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposure to the Listed Chemical, as well as expensive and time-consuming litigation. It should be noted that counsel cannot (1) finalize any settlement until after the 60-day notice period has expired; or (2) speak for the California Attorney General or any District or City Attorney who has received this notice. Therefore, while reaching an agreement with CRA will resolve its claims, such an agreement may not satisfy the public prosecutors.

Proposition 65 requires that notice of intent to sue be given to the Violators sixty (60) days before the suit is filed. Cal. Health & Safety Code § 25249.7(d)(1). With this letter, CRA gives notice of the violations to the Violators and the appropriate governmental authorities. In the absence of any action by the appropriate governmental authorities within sixty

(60) calendar days of the sending of this notice, CRA may file an enforcement action. See *Cal. Code Civ. Proc.* § 1013; *Cal. Health & Safety Code* § 25249.7(d)(1); and *Cal. Code Regs.* Tit. 27 § 25903(d)(1). Per *Cal. Code Regs.* Tit. 27, § 25600.2(g) (2018), the retail seller noticed on this 60-Day Notice is hereby requested to promptly provide the names and contact information for the manufacturer(s), producer(s), packager(s), importer(s), supplier(s), and/or distributor(s) of the Covered Products in this Notice.

Consumer Rights Advocates, LLC remains open and willing to discuss the possibilities of resolving this violation short of instituting an enforcement action in the public interest pursuant to *Cal. Health & Safety Code* § 25249.7(d).

IX. PRESERVATION OF EVIDENCE

This Notice also serves as a demand that the Notice Recipients preserve and maintain all relevant evidence, including all electronic documents and data, pending the resolution of this matter. Such relevant evidence includes but is not limited to all documents relating to the presence of the Listed Chemicals in the Covered Products; purchase and sales information for Covered Products (i.e., purchasers; suppliers; quantity; the identity of the manufacturer(s), producer(s), packager(s), importer(s), supplier(s), and/or distributor(s), quantity per transaction, as well as the suppliers of the raw material, the current inventory of the Covered Product in California); efforts to comply with Proposition 65 with respect to the Covered Products; communications with any person relating to the presence or potential presence of the Listed Chemical in Covered Products.

This demand applies to all relevant evidence related to the Covered Products offered for sale in the State of California as far back as June 5, 2022, through the date of any trial of the claims in this Notice.

X. CERTIFICATE OF MERIT

Pursuant to Health & Safety Code §25249.6 and Title 11, California Code of Regulations, section 3100, a Certificate of Merit is attached hereto. A second copy of the entire notice and Certificate of Merit is served on the Attorney General with all supporting documentation required by section 3102 attached hereto.

XI. CONTACT INFORMATION

Consumer Rights Advocates, LLC has retained the Cornerstone Law Firm, PC, as legal counsel for this claim. Please direct all communications related to this Notice of Violation to the following:

Davar Danialpour, Esq.
Cornerstone Law Firm, PC
357 S. Robertson Blvd. 2ND Floor
Beverly Hills, CA 90211
Telephone: (310) 444-0055
Facsimile: (310) 444-0066
Email: David@davarlaw.com

Sincerely,



Davar Danialpour, Esq.
CORNERSTONE LAW FIRM, PC
Attorneys for Consumer Rights Advocates, LLC

Dated: 06/05/2023

Attachments:

- Certificate of Merit;
- Certificate of Service;
- The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary;
- Confidential Information in Support of Certificate of Merit (Attorney General Only)

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Davar Danialpour, hereby declare:

1. This Certificate of Merit accompanies the attached 60-Day notice in which it is alleged that the parties identified in the notice have violated Health and Safety Code § 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 exposure to the Listed Chemical that is the subject of this 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 plaintiff’s case can be established, and the information did not prove that the alleged Violators 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 information identified in Health and Safety Code § 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: June 5, 2023



Davar Danialpour

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 over the age of 18 and not a party to this case. I am a resident or employed in the county where the mailing occurred. My business address is 357 S. Robertson Blvd. 2ND Floor STE 400 Beverly Hills, CA 90211.

ON THE DATE SHOWN BELOW, I SERVE THE FOLLOWING DOCUMENTS:

- 1) 60-Day Notice of Violation of Health & Safety Code § 25249.5, *ET SEQ.*
- 2) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary
- 3) Certificate of Merit pursuant to Health & Safety Code § 25249.7(d)

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 Mail

Michael J Price, or Current CEO Nissin Foods (U.S.A.) Company, Inc. Nissin Food USA Nissin Foods USA Co Inc. 2001 W. Rosecrans Ave Gardena, CA 90249-2931	c/o CSC – Lawyers Incorporating Service Nissin Foods (U.S.A.) Company, Inc. 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833
Attn: Legal Department Nissin Foods Holdings Co., Ltd. Nissin Food Products Co., Ltd. 28-1,6-chome, Shinjuku Shinjuku-ku, Tokyo,160-8524, Japan	Attn: Legal Department Nissin Foods Holdings Co., Ltd. Nissin Food Products Co., Ltd. 1-1,4chome, Nishinakajima Yodogawa-ku, Osaka,532-8524, Japan

Additionally,

ON THE DATE SHOWN BELOW, I SERVE THE FOLLOWING DOCUMENTS:

- 1) 60-Day Notice of Violation of Health & Safety Code § 25249.5, *ET SEQ.*
- 2) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary
- 3) Certificate of Merit pursuant to Health & Safety Code § 25249.7(d)
- 4) Supporting Factual Information Sufficient to establish the bases for Certificate of Merits

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/prop65/60-day-notice-search>:

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

Additionally,

ON THE DATE SHOWN BELOW, I SERVE THE FOLLOWING DOCUMENTS:

- 1) 60-Day Notice of Violation of Health & Safety Code § 25249.5, *ET SEQ.*
- 2) Certificate of Merit pursuant to Health & Safety Code § 25249.7(d)

on each of the parties on the “Distribution List” attached, and depositing it at a U.S. Postal Service office with postage fully prepaid for delivery by First Class Mail, and on each of the parties listed on the “Electronic Service” when a true and correct copy thereof was sent via electronic mail.

Executed on June 5, 2023, in Beverly Hills, California.


Azadeh Amanollahi

Distribution List

Alpine County District Attorney PO Box 248 Markleeville, CA 96120	Lake County District Attorney 255 N. Forbes Street Lakeport, CA 95453	San Jose City Attorney's Office 200 East Santa Clara Street, 16 th Floor San Jose, CA 95113
Amador County District Attorney 708 Court Street, Suite 202 Jackson, CA 95642	Los Angeles County District Attorney 211 West Temple Street, Suite 1200 Los Angeles, CA 90012	San Mateo County District Attorney 400 County Ctr., 3 rd Floor Redwood City, CA 94063
Butte County District Attorney 25 County Center Drive Oroville, CA 95965	Los Angeles City Attorney's Office 200 N. Main Street Suite 800 Los Angeles, CA 90012	Shasta County District Attorney 1355 West Street Redding, CA 96001
Colusa County District Attorney 346 Fifth Street Suite 101 Colusa, CA 95932	Madera County District Attorney 209 West Yosemite Avenue Madera, CA 93637	Sierra County District Attorney PO Box 457 Downieville, CA 95936
Del Norte County District Attorney 450 H Street, Suite 171 Crescent City, CA 95531	Marin County District Attorney 3501 Civic Center Drive, Suite 145 San Rafael, CA 94903	Siskiyou County District Attorney PO Box 986 Yreka, CA 96097
El Dorado County District Attorney 778 Pacific St. Placerville, CA 95667	Mendocino County District Attorney PO Box 1000 Ukiah, CA 95482	Solano County District Attorney 675 Texas Street Suite 4500 Fairfield, CA 94533
Glenn County District Attorney PO Box 430 Willows, CA 95988	Modoc County District Attorney 204 S. Court Street, Suite 202 Alturas, CA 96101	Stanislaus County District Attorney 832 12 th Street, Suite 300 Modesto, CA 95354
Humboldt County District Attorney 825 5 th Street 4 th Floor Eureka, CA 95501	San Bernardino County District Attorney 303 West Third Street San Bernardino, CA 92415	Sutter County District Attorney 463 Second Street Yuba City, CA 95991
Imperial County District Attorney 940 West Main Street Suite 102 El Centro, CA 92243	Mono County District Attorney PO Box 617 Bridgeport, CA 93517	Tehama County District Attorney PO Box 519 Red Bluff, CA 96080
Kern County District Attorney 1215 Truxtun Avenue, 4 th Floor Bakersfield, CA 93301	Orange County District Attorney PO Box 808 Santa Ana, CA 92702	Trinity County District Attorney PO Box 310 Weaverville, CA 96093
Kings County District Attorney 1400 West Lacey Boulevard, Building # 4 Hanford, CA 93230	San Benito County District Attorney 419 Fourth Street, 2 nd Floor Hollister, CA 95023	Tuolumne County District Attorney 423 N. Washington Street Sonora, CA 95370
Berkeley City Attorney's Office 2180 Milvia St, 4 th Floor Berkely, CA 94704	Oakland City Attorney 1 Frank Ogawa Plaza 6 th FL Oakland, CA 94612	Yuba County District Attorney 215 Fifth Street, Suite 152 Marysville, CA 95901

Electronic Service

Alameda County District Attorney CEPDProp65@acgov.org	Nevada District Attorney DA.Prop65@co.nevada.ca.us	San Luis Obispo Deputy District Attorney edobroth@co.slo.ca.us
Calaveras County District Attorney Prop65Env@co.calaveras.ca.us	Placer County District Attorney Prop65@placer.ca.gov	Santa Barbara Deputy District Attorney DAProp65@co.santa-barbara.ca.us
Contra Costa Deputy District Attorney sgrassini@contracostada.org	Plumas County District Attorney davidhollister@countyofplumas.com	Santa Clara Supervising Deputy District Attorney EPU@da.sccgov.org
Fresno District Attorney consumerprotection@fresnocountyca.gov	Riverside County District Attorney Prop65@rivcoda.org	Santa Clara City Attorney Proposition65notices@sanjoseca.gov
Inyo County District Attorney inyoda@inyocounty.us	Sacramento County District Attorney Prop65@sacda.org	Santa Cruz County District Attorney Prop65DA@santacruzcounty.us
Lassen County Program Coordinator DChandler@co.lassen.ca.us	San Diego County District Attorney SanDiegoDAProp65@sdacda.org	Sonoma District Attorney Jeannie.Barnes@sonoma-county.org
Mariposa County District Attorney mca@mariposacounty.org	San Diego Deputy City Attorney CityAttyProp65@sandiego.gov	Tulare District Attorney Prop65@co.tulare.ca.us
Merced County District Attorney Prop65@countyofmerced.com	San Francisco Deputy City Attorney Prop65@sfcityatt.org	Ventura County District Attorney daspecialops@ventura.org
Monterey County District Attorney Prop65DA@co.monterey.ca.us	San Francisco Assistant District Attorney alexandra.grayner@sfgov.org	Yolo County District Attorney cfepd@yolocounty.org
Napa County District Attorney CEPD@countyofnapa.org	San Joaquin District Attorney DAConsumer.Environmental@sjcda.org	