

December 7, 2023

**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 Ancient Grain Crackers containing Cadmium.

Dear Alleged Violators and Public Enforcement Agencies:

Berj Parseghian (“Claimant”), serves this Notice of Violation (“Notice”) on Dr. in the Kitchen, LLC; and 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. Berj Parseghian’s contact information is the following: Phone number; 626.604.1779 | Address: c/o KJT Law Group, LLP - Attn: Tro Krikorian, Esq. - 230 N. Maryland Avenue, Suite 306, Glendale, CA 91206. 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.

Consumer Product and Chemical(s) Involved

Claimant has discovered that Ancient Grain Crackers contains Cadmium. These violations involve exposures to cadmium from the products listed below. The State of California has officially listed cadmium as a chemical known to cause cancer, developmental toxicity and reproductive harm.

Identifiers for the Ancient Grain Crackers include but are not limited to: **“Flackers – Flax & Fonio – Ancient Grain Crackers – Everything; UPC #: 8 93615 00222 0.”**

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 Ancient Grain Crackers for distribution or sale in California to consumers. The packaging for Ancient Grain Crackers (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 Ancient Grain Crackers, 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 Ancient Grain Crackers, 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 cadmium. The primary route of cadmium exposure to consumers is through direct ingestion when consumers eat the Ancient Grain Crackers. 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 cadmium as required by State law.

Duration of Violations

These violations have been occurring every day between since at December 7, 2022, 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 cadmium 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 be contacted through:

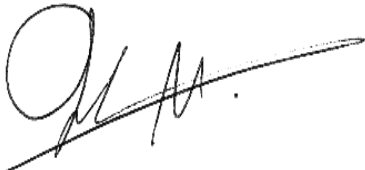
**Tro Krikorian, Esq.**  
**KJT Law Group, LLP**  
**230 N. Maryland Avenue, Suite 306, Glendale, CA 91206**  
**Telephone: (818) 507-8525**  
**Email: Tro@KJTLawGroup.com**

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:

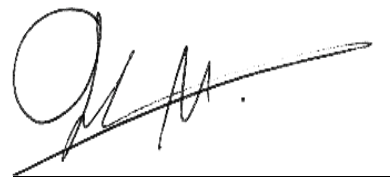
**Certificate of Merit**  
**Supporting Documentation for Certificate of Merit (to Attorney General Only)**  
**Proposition 65: A Summary**  
**Proof of Service (including DA Service List)**

**Ancient Grain Crackers containing Cadmium  
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: December 7, 2023



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 **December 7, 2023** 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:**

<b>Entity Address:</b> Dr. in the Kitchen Attn: Legal Department 5621 International Parkway, Suite 301 Minneapolis, MN 55428	<b>Registered Agent for Service of Process:</b> Dr. in the Kitchen Attn: Legal Department 2909 Bryant Ave. South, Suite 200 Minneapolis, MN 55408
<b>Entity Address:</b> Whole Foods Market California, Inc. 6401 Hollis Street, Suite 150 Emeryville, CA 94608	<b>Registered Agent for Service of Process:</b> Whole Foods Market California, Inc. CT Corporation System 330 N. Brand Boulevard, Suite 700 Glendale, CA 91203

On **December 7, 2023** 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>

On **December 7, 2023** 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**

by sending a true and correct copy via electronic mail to the address listed below:

Alameda County District Attorney's Office  
The Honorable Pamela Y. Price  
1225 Fallon Street, Suite 900, Oakland, CA 94612 | CEPDProp65@acgov.org

Executed under penalty of perjury pursuant to the laws of the State of California in Glendale, California on **December 7, 2023**.

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## APPENDIX A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

#### THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 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 authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. 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 of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

***The "Proposition 65 List."*** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to

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<sup>1</sup> All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed 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 unless an exemption applies. 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 to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

***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. Some discharges are exempt from this requirement under certain circumstances discussed below.

#### *DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?*

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

***Grace Period.*** Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

***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.

***Businesses with nine or fewer employees.*** Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

**Exposures that pose no significant risk of cancer.** For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure 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” (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

**Exposures that will produce no observable reproductive effect at 1,000 times the level in question.** For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure 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” divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

**Exposures to Naturally Occurring Chemicals in Food.** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

**Discharges that do not result in a “significant amount” of the listed chemical entering 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 listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” level for chemicals that cause cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

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<sup>2</sup> See Section 25501(a)(4).



## *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. Lawsuits 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. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the 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 to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at:  
<http://oehha.ca.gov/prop65/law/p65law72003.html>.

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...*

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at [P65Public.Comments@oehha.ca.gov](mailto:P65Public.Comments@oehha.ca.gov).

Revised: May 2017

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

## SERVICE LIST

### ALPINE COUNTY

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

### AMADOR COUNTY

The Honorable Todd Riebe  
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708 Court Street  
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The Honorable Michael Ramsey  
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The Honorable Barbara Yook  
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891 Mountain Ranch Road  
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### YUBA COUNTY

The Honorable Clint Curry  
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### TEHAMA COUNTY

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Red Bluff, CA 96800

### CITY OF LOS ANGELES

City Attorney's Office  
200 N. Main Street, Room 800  
Los Angeles, CA 90012

### CITY OF SACRAMENTO

Office of the City Attorney  
915 I Street, 4th Floor  
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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San Francisco, CA 94102

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