

NOTICE OF VIOLATION

California Safe Drinking Water and Toxic Enforcement Act

Nicotine Exposures Resulting From Use of Nicotine Pouches

April 3, 2024

This Notice of Violation is provided to you pursuant to and in compliance with California Health and Safety Code Section 25249.7(d).

- For general information regarding the California Safe Drinking Water and Toxic Enforcement Act, see the attached summary provided by the California EPA (copies not provided to public enforcement agencies).
- This Notice is provided by the Center for Environmental Health (“CEH”), 2201 Broadway, Suite 508, Oakland, CA 94612, (510) 655-3900. CEH is a nonprofit corporation dedicated to protecting the environment, improving human health and supporting environmentally sound practices. Emily Reder is a Senior Manager of the Toxic Pollution Prevention Program and a responsible individual within CEH.

Description of Violation:

- Violator: The names and addresses of the violators are identified on the attached Exhibit 1.
- Time Period of Exposure: The violations have been occurring since at least April 3, 2021, and are continuing to this day.
- Provision of Proposition 65: This Notice of Violation covers the “warning provision” of Proposition 65, which is found at California Health and Safety Code Section 25249.6.
- Chemical(s) Involved: The name of the listed chemical involved in these violations is nicotine. Exposures to nicotine occur from use of the products identified in this Notice.
- Types of Products: The specific types of products causing these violations are Nicotine Pouches. Non-exclusive examples of these specific product types are listed in Exhibit 1.
- Description of Exposure: This Notice addresses consumer exposures to nicotine. Use of the nicotine pouches identified in this Notice results in human exposures to nicotine. The products contain significant amounts of nicotine to which users are exposed when the products are used in the intended manner. The primary routes of exposure for the violations are inhalation and direct ingestion when consumers place the Nicotine pouches in their mouths. These exposures occur in homes, workplaces and everywhere else throughout

California where the products are used. No clear and reasonable warning is provided with these products regarding the carcinogenic hazards of nicotine.

Resolution of Noticed Claims:

Based on the allegations set forth in this Notice, CEH intends to file a citizen enforcement lawsuit against the alleged violator unless such violator agrees in a binding written instrument to: (1) recall products already sold; (2) provide clear and reasonable warnings for products sold in the future; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health and Safety Code Section 25249.7(b). If the alleged violator is interested in resolving this dispute without resort to expensive and time-consuming litigation, please feel free to contact CEH through its counsel identified below. It should be noted that CEH cannot: (1) finalize any settlement until after the 60-day notice period has expired; nor (2) speak for the Attorney General or any District or City Attorney who received CEH's 60-day Notice. Therefore, while reaching an agreement with CEH will resolve its claims, such agreement may not satisfy the public prosecutors.

Preservation of Relevant Evidence:

This Notice also serves as a demand that the alleged violator preserve and maintain all relevant evidence, including all electronic documents and data, pending resolution of this matter. Such relevant evidence includes but is not limited to all documents relating to nicotine in nicotine pouches; actual or potential exposures to nicotine from use of such products; purchase and sales information for such products; efforts to comply with Proposition 65 with respect to such products; communications with any person relating to actual or potential exposures to nicotine from use of such products; and representative exemplars of each unit of any such products sold by the alleged violator since April 3, 2021, through the date of any trial of the claims alleged in this Notice.

Please direct any inquiries regarding this Notice to CEH's counsel Mark N. Todzo at Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117, (415) 913-7800, mtodzo@lexlawgroup.com.

EXHIBIT 1
April 3, 2024 Notice of Violation
Nicotine Exposures Resulting From Use of Nicotine Pouches

| Name and Address of Responsible Party | Nicotine Pouch Non-Exclusive Exemplar |
|--|---|
| <p style="text-align: center;">Helix Innovations LLC 6601 W Broad St., Richmond, CA 23230</p> <p style="text-align: center;">Altria Group Distribution Company 6601 W Broad St., Richmond, CA 23230</p> | <p style="text-align: center;">On! Mint Nicotine Pouches (20 pouches); 4 mg; UPC No. 8-55022-00524-9; R166 U0810</p> <p style="text-align: center;">On! Nicotine Pouches (20 pouches); 4 mg; UPC No. 8-55022-00538-6; M318 J1916; Rewards No. NXD93-6RY7-NTWW</p> <p style="text-align: center;">On! Nicotine Pouches (20 pouches); 8 mg; UPC No. 8-55022-00539-3; M109 J0023; Rewards No. NWF6F-YD3D-WN7D</p> |
| <p style="text-align: center;">Walgreen Co. 108 Wilmot Road Deerfield, IL 60015</p> | <p style="text-align: center;">On! Nicotine Pouches (20 pouches); 4 mg; UPC No. 8-55022-00538-6; M318 J1916; Rewards No. NXD93-6RY7-NTWW</p> <p style="text-align: center;">ZYN Smooth Nicotine Pouches (15 pouches); 6 mg; UPC No. 6-09249-91402-6; ZYN rewards No: pWPF8f4tWG; Expiration 24 Oct 2024; J24412 22:21</p> |
| <p style="text-align: center;">Swedish Match North America LLC Two James Center 1021 E. Cary Street, Suite 1600 Richmond VA 23219</p> <p style="text-align: center;">Philip Morris USA Inc. 6601 W Broad Street Richmond VA 23230</p> <p style="text-align: center;">Pinkerton Tobacco Co. L.P. 1021 E Cary Street, Ste 1600 Richmond, VA 23219</p> <p style="text-align: center;">GoBrands, Inc. 537 N 3rd Street Philadelphia, PA 19123</p> <p style="text-align: center;">GoBrands, Inc. 454 N 12th Street Philadelphia, PA 19123</p> | <p style="text-align: center;">ZYN Chill Nicotine Pouches (15 pouches); 6 mg; UPC No. 6-09249-92022-5; ZYN rewards No: 2k3CTccwJQ; Expiration 04 Jan 2025; A0459 08:35</p> |
| <p style="text-align: center;">Rite Aid Corporation 200 Newberry Commons Etters, PA 17319</p> <p style="text-align: center;">Rite Aid Corporation 1200 Intrepid Avenue, 2nd Floor Philadelphia, PA 19112</p> | <p style="text-align: center;">ZYN Chill Nicotine Pouches (15 pouches); 6 mg; UPC No. 6-09249-92022-5; ZYN rewards No. g5mxxZCtWq; Expiration 27 Dec 2024; L2749 14:40</p> |

| Name and Address of Responsible Party | Nicotine Pouch Non-Exclusive Exemplar |
|--|--|
| Northerner Scandinavia Inc. 631 Highway 90A Missouri City, TX, 77489 | ZYN Wintergreen Nicotine Pouches; (5 cans); 6 mg; UPC No. 6-09249-90342-6; ZYN rewards No: rbMxgwzmttd; Expiration 15 Feb 2025; B1555 16:12 |
| Lucky Stores LLC 250 E Parkcenter Blvd Boise, ID 83706 Save Mart Supermarkets LLC 1800 Standiford Ave Modesto, CA 95350 | On! Nicotine Pouches (20 pouches); 8 mg; UPC No. 8-55022-00539-3; M109 J0023; Rewards No. NWF6F-YD3D-WN7D |

CERTIFICATE OF MERIT
Health & Safety Code § 25249.7(d)

I, Mark N. Todzo, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the party identified in the notice has violated Health & Safety Code § 25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney with the Lexington Law Group, and I represent the noticing party, the Center for Environmental Health.

3. Members of my firm and 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 exposures to the listed chemical that is the subject of the action.

4. 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 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 the 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 & 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.

April 3, 2024



Mark N. Todzo
Attorney for CENTER FOR
ENVIRONMENTAL HEALTH

1 **PROOF OF SERVICE**

2 I, Star Beltman, declare:

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4 I am a citizen of the United States and employed in the County of San Francisco, State of
5 California. I am over the age of eighteen (18) years and not a party to this action. My business
6 address is 503 Divisadero Street, San Francisco, CA 94117 and my email address is
7 sbeltman@lexlawgroup.com.

8 On April 3, 2024, I served the following document(s) on all interested parties in this
9 action by placing a true copy thereof in the manner and at the addresses indicated below:

10 **NOTICE OF VIOLATION OF CALIFORNIA SAFE DRINKING WATER AND
11 TOXIC ENFORCEMENT ACT;**

12 **CERTIFICATE OF MERIT;** and

13 **THE SAFE DRINKING AND TOXIC ENFORCEMENT ACT OF 1986**
14 **(PROPOSITION 65): A SUMMARY** (only sent to those on service list marked with an
15 asterisk).

16 **BY MAIL:** I am readily familiar with the firm's practice for collecting and processing mail
17 with the United States Postal Service ("USPS"). Under that practice, mail would be deposited
18 with USPS that same day with postage thereon fully prepaid at San Francisco, California in the
19 ordinary course of business. On this date, I placed sealed envelopes containing the above
20 mentioned documents for collection and mailing following my firm's ordinary business practices.

21 *Please see attached service list.*

22 **BY ELECTRONIC MAIL:** I transmitted a PDF version of the document(s) listed above via
23 email to the email address(es) indicated on the attached service list [or noted above] before 5 p.m.
24 on the date executed.

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

9 Executed on April 3, 2024 at San Francisco, California.

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Star Beltman

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