

Law Office of Shannon C. Wilhite

Post Office Box 82
Bayside, CA 95524
(707) 599-5420
scmwilhite.attorneyatlaw@gmail.com

November 11, 2024

60-DAY NOTICE OF INTENT TO SUE

for violations of the Safe Water and Toxic Enforcement Act of 1986

VIA CERTIFIED FIRST CLASS MAIL

Josep Barenys
Chief Financial Officer
ACH Food Companies Inc.
7970 Stage Hills Blvd.
Memphis, TN 38133
(901) 381-2900

Imad Bazzi
Chief Executive Officer
ACH Food Companies Inc.
One Parkview Plaza FL5
Oakbrook Terrace, IL 60181-4400

Amazon.com Sales, Inc.
c/o CSC – Lawyers Incorporating Service
2710 Gateway Oaks Drive
Sacramento, CA 98533

Current Chief Executive Officer
Amazon.com Sales, Inc.
c/o Michael Miller
410 North Terry Ave.
Seattle, WA 98108

VIA ELECTRONIC FILING

State of California Department of
Office of Attorney General of
California
Filing link: oag.ca.gov/prop65

VIA FIRST CLASS MAIL

District Attorneys of California
Counties
City Attorneys, as in the
Certificate of Service

VIA E-MAIL

District Attorneys of California
Counties, as in the Certificate of
Service

**Re: NOTICE OF VIOLATION AGAINST ACH FOOD COMPANIES INC
AND AMAZON.COM OF CALIFORNIA HEALTH & SAFETY CODE
SECTION 25249.6**

To Alleged Violator,

This Notice of Violation is provided to you pursuant to the California Health & Safety Code § 25249.7(d).

This office represents Ruby Gustafson (“Claimant”), a citizen of the State of

California acting in the interest of the general public to further the protection of the environment, promote awareness of exposure to toxic chemicals from use of consumer products sold in California, improve human health, environmental education, worker and consumer rights and increase corporate responsibility.

Violation

As to the product(s) described below, Claimant has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), codified in the California Health & Safety Code sections 25249.5, et. seq. This violation continues to occur because Violator has failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in California. California Health & Safety Code § 25249.6 provides 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 providing a clear and reasonable warning to such individual..." Only with a proper warning can a California citizen make an informed decision regarding whether to eliminate or how to reduce the risk of toxic exposure to their person.

Under Cal. Health & Safety Code § 25249.7(d), Claimant seeks to prosecute the alleged continuing noncompliance and to warn consumers about their exposure to the violative chemical(s), or reduce and/or eliminate consumer exposures from product(s) (collectively, the "Products") listed in the table below, which are manufactured, distributed and/or sold by Violators.

Product Information

The specific product which is causing consumer exposures in violation of Proposition 65, is the Anthony's Organic Cassava Flour, including but not limited to UPC #X002466PWB. ACH Food Companies, Inc. and Amazom.com markets, distributes and /or sells the Product(s) which, according to laboratory test results, have exposed and continue to expose consumers within the State of California to lead. The primary route of the exposure has been through ingestion.

Product	UPC Code	Violative Chemical
Anthony's Organic Cassava Flour	X002466PWB	Lead

With respect to each Product(s) listed above, the violation commenced on the latter of the date that the Product(s) was first offered for sale in California, or at least as of the date of this Notice, and have continued every day since the relevant date the violation commenced; and will continue every day henceforth until lead is removed from the Products, reduced to allowable levels, or until a "clear and reasonable" warning is provided to consumers by the Noticed Parties, as applicable, in accordance with the law.

Pursuant to Title 27, C.C.R. § 25903(b), copy of "The Safe Drinking Water and Toxic Enforcement act of 1986 (Proposition 65): A Summary" is attached hereto for reference by Defendants. For more information concerning the provisions of Proposition 65, contact OEHHA at 916-445-6900. Pursuant to Title 11, C.C.R. § 3100, the "Certificate of Merit" is attached hereto.

Request for Information

Any alleged violator who is a retail seller is herein requested to provide the name and contact information for the manufacturer, producer, packages, importer, supplier, and distributor of the product sold. California Code of Regulations, Title 27, section 25600.2.

Notice of Duty to Preserve Evidence

“The duty to preserve evidence is triggered when litigation is pending or reasonably foreseeable, at which time a party is required to preserve all relevant evidence and put into place a litigation hold to preserve relevant documents.” *Net-Com Servs. v. Eupen Cable USA, Inc.*, 2013 U.S. Dist. LEXIS 109810, at *6-7 (C.D. Cal. Aug. 5, 2013) (citations omitted). We accordingly notify Premier of its duty to preserve evidence relevant to the potential

litigation our client may initiate if Premier does not undertake the steps demanded herein. This includes, but is not limited to, documents, tangible things, and electronically stored information (ESI) that are potentially relevant to the anticipated lawsuit and that are in Premier’s custody or control.

Claims Resolution

Consistent with the public interest goals of Proposition 65 to have these ongoing violations of California law quickly rectified, Ms. Gustafson is interested in seeking a prompt resolution of this matter that includes an enforceable written agreement by the Violator to (1) reformulate the Products to eliminate exposures to the identified chemicals, or provide Proposition 65 compliant exposure warnings for Products sold in the future; (2) pay an appropriate civil penalty based on the factors enumerated in Health & Safety Code § 25249.7(b); and (3) provide clear and reasonable warnings complaint with Proposition 65 to all persons located in California who purchased the above products in the last three years.

Prompt action of the Noticed Parties will prevent further consumer exposure to a dangerous chemical without warning, therefore rectifying these alleged ongoing violations of the California law and afford the Noticed Parties the opportunity to avoid increasing costs associated with noncompliance and costly litigation. Ms. Gustafson does intend to file a lawsuit after 60 days if these violations are not resolved.

Please direct all communications regarding this Notice of Violation to this office using the address or contact information indicated on the letterhead.

Sincerely,

Shannon C. Wilhite

Shannon C. Wilhite

LAW OFFICE OF SHANNON C WILHITE

Attachments

1. Certificate of Merit (Cal. Health & Safety Code § 25249.7(d)(1));
2. Certificate of Service
3. Appendix “A” – “The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary” (to the Noticed Parties only);
4. Certificate of Merit (Attorney General)
5. Factual information sufficient to establish basis of the certificate of merit (Attorney General)


CERTIFICATE OF MERIT
Health and Safety Code Section 25249.7(d)

Re: Ruby Gustafson’s Notice of Proposition 65 Violations by Natural Life.

I, Shannon C. Wilhite, attorney at law, 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 the attorney for the Noticing Party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, and/or other data regarding the alleged exposures to the listed chemical that is the cause of 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: November 11, 2024

By 

Shannon C. Wilhite

PROOF OF SERVICE

I, Shannon C. Wilhite, am over the age of 18 and am not a party to this case. I am a resident of or employed in the county where the mailing occurred. My business address is 2212 Jacoby Creek Rd., Bayside, CA 95524.

On November 11, 2024, I served the following documents:

1. 60-Day Notice of Intent to Sue Under Health and Safety Code section 25249.6
2. Certificate of Merit; Health and Safety Code Section 25249.7 (d)
3. Certificate of Merit (Attorney General Copy); Factual information sufficient to establish basis of the certificate of merit (only sent to Attorney General)
4. The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary on the alleged violator (s) listed below via First Class Mail through the United States Postal Service by placing a true and correct copy in a sealed envelope, addressed to the entity listed below and providing such envelope to a United States Postal Service Representative:

Imad Bazzi Chief Executive Officer ACH Food Companies Inc. One Parkview Plaza FL5 Oakbrook Terrace, IL 60181-4400	Amazon.com Sales, Inc. c/o CSC – Lawyers Incorporating Service 2710 Gateway Oaks Drive Sacramento, CA 98533
Josep Barenys Chief Financial Officer ACH Food Companies Inc. 7970 Stage Hills Blvd. Memphis, TN 38133	Current Chief Executive Officer Amazon.com Sales, Inc. c/o Michael Miller 410 North Terry Ave. Seattle, WA 98108

The required electronic filing of a true and correct copy thereof has been made through the website of the California Office of the Attorney General via link at oag.ca.gov/prop65:

State of California Department of Justice
Office of the Attorney General of California
Filing link: oag.ca.gov/prop65

Copies of the notice were provided to the public enforcers by placing a true and correct copy thereof in a sealed envelope, addressed to each of the District Attorney and City Attorney offices the parties listed on the attached Distribution List. The District Attorney and City Attorney offices that have requested electronic service only were served electronically via the email addresses listed on the Distribution List.

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

Signed By: 
Shannon C. Wilhite