Law Office of Shannon C. Wilhite

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

December 16, 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

Current Chief Executive Officer, President or General Counsel Campbell Soup Company c/o Valerie J. Oswalt 13515 Ballantyne Corporate Place Charlotte, NC 28277

Campbell Soup Company c/o CSC – Lawyers Incorporating Service 2710 Gateway Oaks Drive Sacramento, CA 95833

United Natural Foods, Inc. (UNFI) Agent CT Corporation System 450 Veterans Memorial Parkway, Suite 7A East Providence, RI 02908

Current Chief Executive Officer, President or General Counsel United Natural Foods, Inc. (UNFI) 313 Iron Horse Way Providence, RI 02908

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 CAMPBELL SOUP COMPANY
AND UNITED NATURAL FOODS, INC. (UNFI) 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

Law Office of Shannon C. Wilhite P.O. Box 82, Bayside CA, 95524 | scmwilhite.attorneyatlaw@gmail.com

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 Violators have 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 Kettle Brand Air Fried Sea Salt & Vinegar Potato Chips, including but not limited to UPC #084114901941. Campbell Soup Company and UNFI, 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 cadmium. The primary route of the exposure has been through ingestion.

Product	UPC Code	Violative Chemical
Kettle Brand Air Fried Sea	084114901941	Cadmium
Salt & Vinegar Potato Chips		

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 cadmium 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 Violators. 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 distributer 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 Campbell Soup Company and UNFI of its duty to preserve evidence relevant to the potential litigation our client may initiate if Campbell Soup Company and UNFI do 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 Campbell Soup Company and UNFI'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 compliant 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: December 16, 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 December 16, 2024, I served the following documents:

Campbell Soup Company c/o CSC – Lawyers Incorporating Service 2710 Gateway Oaks Drive Sacramento, CA 95833	United Natural Foods, Inc. (UNFI) Agent CT Corporation System 450 Veterans Memorial Parkway, Suite 7A East Providence, RI 02908
Current Chief Executive Officer, President, or General Counsel Campbell Soup Company c/o Valerie J. Oswalt 13515 Ballantyne Corporate Place Charlotte, NC 28277	Current Chief Executive Officer, President, or General Counsel United Natural Foods, Inc. (UNFI) 313 Iron Horse Way Providence, RI 02908

- 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:

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

DISTRIBUTION LIST

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APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA PROTECTION AGENCY THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACTION

1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the office of Environmental Health Hazard Assessment, the Lead and Toxic Enforcement Act 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 law. The reader is directed to the statue and its implementing regulations (See citations below) for further information.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. 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 Regulations, Sections 250000 through 27000.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Governor's List" Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 725 chemicals have been listed as of November 16, 2001. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release, or otherwise engage in activities involving those 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. 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.

Exposures are exempt from the warning requirement if they occur less than twelve months after the date of the listing of the chemical.

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. Discharges are exempt from this requirement if they occur less than twenty months after the date of the listing of chemicals.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. The law exempts:

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. *Exposures that pose no significant risk of cancer*. For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business 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 for more than 250 listed carcinogens.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), a warning is not required if the business 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 (NOEL)," divided by a 1,000- fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect.

Discharge that does not result in a "significant amount" of the listed chemical entering into 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 list chemical has not, does not, or will not enter any drinking water source, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount; expect an amount that would meet the "no significant risk" or "no observable effect" test if an individual were exposed to such an amount in drinking water.

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 (those in cities with a population exceeding 750,000). 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. A notice must comply with the information and procedural requirements specified in regulations (Title 27. California Code of Regulations, Section 25903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of 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 of law to stop committing the violation.

FOR FURTHER INFORMATION....

Contact the Office of Environmental Health Hazard Assessments Proposition 65 Implementation Office at (916)445-6900