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From: Lexington Law Group

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LEXINGTON LAW GROUP  
Howard Hirsch, State Bar No. 213209  
Meredyth Merrow, State Bar No. 328337  
503 Divisadero Street  
San Francisco, CA 94117  
Telephone: (415) 913-7800  
Facsimile: (415) 759-4112  
hhirsch@lexlawgroup.com  
mmerrow@lexlawgroup.com

Attorneys for Plaintiff  
CENTER FOR ENVIRONMENTAL HEALTH

**FILED BY FAX**  
ALAMEDA COUNTY  
May 19, 2020  
CLERK OF  
THE SUPERIOR COURT  
By Lynn Wiley, Deputy  
CASE NUMBER:  
**RG20061569**

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,  
a non-profit corporation,

Plaintiff,

v.

MCCALL FARMS, INC; DOLLAR TREE  
STORES, INC.; THE KROGER CO.; and DOES  
1 through 100, inclusive,

Defendants.

Case No. \_\_\_\_\_

**COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES**

Health & Safety Code §25249.6, *et seq.*

(Other)

1 Plaintiff Center for Environmental Health, in the public interest, based on information and  
2 belief and investigation of counsel, except for information based on knowledge, hereby makes the  
3 following allegations:

#### 4 **INTRODUCTION**

5 1. This Complaint seeks to remedy Defendants' failure to warn individuals in  
6 California that they are being exposed to lead and lead compounds (collectively, "Lead"),  
7 chemicals known to the State of California to cause cancer and birth defects and other  
8 reproductive harm. Such exposures have occurred, and continue to occur, when people consume  
9 canned sweet potatoes, including canned yams ("Sweet Potatoes"), that are sold by Defendants.  
10 Consumers, including pregnant women and children, are exposed to Lead when they consume  
11 Sweet Potatoes.

12 2. Under California's Proposition 65, Health & Safety Code §25249.5, *et seq.*, it is  
13 unlawful for businesses to knowingly and intentionally expose individuals in California to  
14 chemicals known to the State to cause cancer, birth defects or other reproductive harm without  
15 first providing clear and reasonable warnings to exposed individuals. Defendants introduce  
16 Sweet Potatoes containing significant quantities of Lead into the California marketplace, thereby  
17 exposing consumers of their Sweet Potatoes, many of whom are pregnant women and children, to  
18 Lead.

19 3. Despite the fact that Defendants expose pregnant women, children and other  
20 consumers to Lead, Defendants provide no warnings whatsoever about the carcinogenic or  
21 reproductive hazards associated with Lead exposure resulting from consumption of Sweet  
22 Potatoes sold by Defendants. Defendants' conduct thus violates the warning provision of  
23 Proposition 65. Health & Safety Code §25249.6.

#### 24 **PARTIES**

25 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a non-profit  
26 corporation dedicated to protecting the public from environmental health hazards and toxic  
27 exposures. CEH is based in Oakland, California and incorporated under the laws of the State of  
28 California. CEH is a "person" within the meaning of Health & Safety Code §25249.11(a) and

1 brings this enforcement action in the public interest pursuant to Health & Safety Code  
2 §25249.7(d). CEH is a nationally recognized non-profit environmental advocacy group that has  
3 prosecuted a large number of Proposition 65 cases in the public interest. These cases resulted in  
4 significant public benefit, including the reformulation of thousands of products to remove toxic  
5 chemicals and to make them safer. CEH also provides information to Californians about the  
6 health risks associated with exposure to hazardous substances, where manufacturers and other  
7 responsible parties fail to do so.

8           5. Defendant DOLLAR TREE STORES, INC. is a person in the course of doing  
9 business within the meaning of Health & Safety Code §25249.11. Defendant DOLLAR TREE  
10 STORES, INC. sells Sweet Potatoes that are sold or consumed in California. CEH's allegations  
11 and claims against Defendant DOLLAR TREE STORES, INC. in this action are limited to Sweet  
12 Potatoes sold by Defendant MCCALL FARMS, INC.

13           6. Defendant MCCALL FARMS, INC. is a person in the course of doing business  
14 within the meaning of Health & Safety Code §25249.11. Defendant MCCALL FARMS, INC.  
15 sells Sweet Potatoes that are sold or consumed in California.

16           7. Defendant THE KROGER CO. is a person in the course of doing business within  
17 the meaning of Health & Safety Code §25249.11. Defendant THE KROGER CO. sells Sweet  
18 Potatoes that are sold or consumed in California. CEH's allegations and claims against Defendant  
19 THE KROGER CO. in this action are limited to Sweet Potatoes sold under the Kroger private  
20 label brand.

21           8. DOES 1 through 100 are each a person in the course of doing business within the  
22 meaning of Health & Safety Code §25249.11. DOES 1 through 100 sell Sweet Potatoes that are  
23 sold or consumed in California.

24           9. The true names of DOES 1 through 100 are either unknown to CEH at this time or  
25 the applicable time period before which CEH may file a Proposition 65 action has not run. When  
26 their identities are ascertained or the applicable time period before which CEH may file a  
27 Proposition 65 action has run, the Complaint shall be amended to reflect their true names.  
28

1 10. The defendants identified in paragraphs 5 through 7 and DOES 1 through 100 are  
2 collectively referred to herein as “Defendants.”

3 **JURISDICTION AND VENUE**

4 11. The Court has jurisdiction over this action pursuant to Health & Safety Code  
5 §25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant to  
6 California Constitution Article VI, Section 10, because this case is a cause not given by statute to  
7 other trial courts.

8 12. This Court has jurisdiction over Defendants because each is a business entity that  
9 does sufficient business, has sufficient minimum contacts in California, or otherwise intentionally  
10 avails itself of the California market through the sale, marketing, or consumption of Sweet  
11 Potatoes in California or by having such other contacts with California so as to render the  
12 exercise of jurisdiction over it by the California courts consistent with traditional notions of fair  
13 play and substantial justice.

14 13. Venue is proper in Alameda County Superior Court because one or more of the  
15 violations arise in the County of Alameda.

16 **BACKGROUND FACTS**

17 14. The People of the State of California have declared by initiative under Proposition  
18 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or  
19 other reproductive harm.” Proposition 65, §1(b).

20 15. To effectuate this goal, Proposition 65 prohibits exposing people to chemicals  
21 listed by the State of California as known to cause cancer, birth defects or other reproductive  
22 harm above certain levels without a “clear and reasonable warning” unless the business  
23 responsible for the exposure can prove that it fits within a statutory exemption. Health & Safety  
24 Code §25249.6 states, in pertinent part:

25 No person in the course of doing business shall knowingly and  
26 intentionally expose any individual to a chemical known to the state to  
27 cause cancer or reproductive toxicity without first giving clear and  
28 reasonable warning to such individual. . .

1           16.       On February 27, 1987, the State of California officially listed lead as a chemical  
2 known to cause reproductive toxicity. Lead is specifically identified as a reproductive toxicant  
3 under three subcategories: “developmental reproductive toxicity,” which means harm to the  
4 developing fetus, “female reproductive toxicity,” which means harm to the female reproductive  
5 system, and “male reproductive toxicity,” which means harm to the male reproductive system. 27  
6 California Code of Regulations (“C.C.R.”) §27001(c). On February 27, 1988, one year after it  
7 was listed as a chemical known to cause reproductive toxicity, lead became subject to the clear  
8 and reasonable warning requirement regarding reproductive toxicants under Proposition 65. *Id.*;  
9 Health & Safety Code §25249.10(b).

10           17.       On October 1, 1992, the State of California officially listed lead and lead  
11 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were  
12 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear  
13 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R.  
14 §27001(b); Health & Safety Code §25249.10(b).

15           18.       There is no safe level of exposure to Lead and even minute amounts of Lead have  
16 been proven harmful to children and adults. *See, e.g.*, Report of the Advisory Committee on  
17 Childhood Lead Poisoning Prevention of the U.S. Centers for Disease Control and Prevention,  
18 “Low Level Lead Exposure Harms Children: A Renewed Call For Primary Prevention,” January  
19 4, 2012. A study performed by the California Office of Environmental Health Hazard  
20 Assessment determined that exposures to Lead even at levels previously considered safe have  
21 now been shown to cause adverse health effects, including reduced cognitive ability and  
22 significant diminution of intellectual potential. Carlisle, J., *et al.*, “A Blood Lead Benchmark for  
23 Assessing Risks from Childhood Lead Exposure,” *Journal of Environmental Science & Health*,  
24 44, 2009. This conclusion is based on a meta-study of 1,333 children who participated in seven  
25 international studies. *See* Lanphear, B., *et al.*, “Low-Level Environmental Lead Exposure and  
26 Children’s Intellectual Function: An International Pooled Analysis,” *Environmental Health*  
27 *Perspectives*, 113:7, 2005.

1           19.     Young children are especially susceptible to the toxic effects of Lead. Children  
2 show a greater sensitivity to Lead’s effects than do adults. Adverse health impacts from Lead  
3 exposure generally occur in children at lower blood Lead levels than in adults. Children absorb  
4 and retain more Lead in proportion to their weight than do adults. Young children also show a  
5 greater prevalence of iron deficiency, a condition that can increase gastrointestinal absorption of  
6 Lead. The body accumulates Lead over a lifetime and releases it slowly, so even small doses  
7 received in childhood, over time, can cause adverse health impacts, including but not limited to  
8 reproductive toxicity, later in life. For example, in times of physiological stress, such as  
9 pregnancy, the body can mobilize accumulated stores of Lead in tissue and bone, thereby  
10 increasing the level of Lead in the blood and increasing the risk of harm to the fetus.

11           20.     Lead exposures for pregnant women are also of particular concern in light of  
12 evidence that even short term lead exposures *in utero* may have long-term harmful effects. *See,*  
13 *e.g.,* Hu, H., *et al.*, “Fetal Lead Exposure at Each State of Pregnancy as a Predictor of Infant  
14 Mental Development,” *Environmental Health Perspectives*, 114:11, 2006; Schnaas, L., *et al.*,  
15 “Reduced Intellectual Development in Children with Prenatal Lead Exposure,” *Environmental*  
16 *Health Perspectives*, 114:5, 2006. Increased lead exposure during pregnancy has also been  
17 shown to cause increased risk of premature birth and increased blood pressure in both the mother  
18 during pregnancy and the child after birth. *See, e.g.,* Vigeh, M., *et al.*, “Blood Lead at Currently  
19 Acceptable Levels May Cause Preterm Labour,” *Occupational & Environmental Medicine*,  
20 68:231-234, 2010; Zhang, A., *et al.*, “Association Between Prenatal Lead Exposure and Blood  
21 Pressure in Children,” *Environmental Health Perspectives*, 120:3, 2012; Wells, E., *et al.*, “Low-  
22 Level Lead Exposure and Elevations in Blood Pressure During Pregnancy,” *Environmental*  
23 *Health Perspectives*, 119:5, 2011.

24           21.     Defendants’ Sweet Potatoes contain sufficient quantities of Lead such that  
25 consumers, including pregnant women and children, who consume Sweet Potatoes are exposed to  
26 a significant amount of Lead. The primary route of exposure for the violations is direct ingestion  
27 when people consume Sweet Potatoes. These exposures occur in homes, workplaces and  
28 everywhere else throughout California where Sweet Potatoes are consumed.

1           22.     No clear and reasonable warning is provided with Defendants’ Sweet Potatoes  
2 regarding the carcinogenic or reproductive hazards of Lead.

3           23.     Any person acting in the public interest has standing to enforce violations of  
4 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid  
5 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action  
6 within such time. Health & Safety Code §25249.7(d).

7           24.     More than sixty days prior to naming each Defendant in this lawsuit, CEH  
8 provided a 60-Day “Notice of Violation” of Proposition 65 to the California Attorney General, to  
9 the District Attorneys of every county in California, to the City Attorneys of every California city  
10 with a population greater than 750,000 and to each of the named Defendants. In compliance with  
11 Health & Safety Code §25249.7(d) and 27 C.C.R. §25903(b), each Notice included the following  
12 information: (1) the name and address of each violator; (2) the statute violated; (3) the time period  
13 during which violations occurred; (4) specific descriptions of the violations, including (a) the  
14 routes of exposure to Lead from Sweet Potatoes, and (b) the specific type of products sold and  
15 used in violation of Proposition 65; and (5) the name of the specific Proposition 65-listed  
16 chemical that is the subject of the violations described in each Notice.

17           25.     CEH also sent a Certificate of Merit for each Notice to the California Attorney  
18 General, to the District Attorneys of every county in California, to the City Attorneys of every  
19 California city with a population greater than 750,000, and to each of the named Defendants. In  
20 compliance with Health & Safety Code §25249.7(d) and 11 C.C.R. §3101, each Certificate  
21 certified that CEH’s counsel: (1) has consulted with one or more persons with relevant and  
22 appropriate experience or expertise who reviewed facts, studies, or other data regarding the  
23 exposures to Lead alleged in each Notice; and (2) based on the information obtained through such  
24 consultations, believes that there is a reasonable and meritorious case for a citizen enforcement  
25 action based on the facts alleged in each Notice. In compliance with Health & Safety Code  
26 §25249.7(d) and 11 C.C.R. §3102, each Certificate served on the Attorney General included  
27 factual information – provided on a confidential basis – sufficient to establish the basis for the  
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1 Certificate, including the identity of the person(s) consulted by CEH’s counsel and the facts,  
2 studies, or other data reviewed by such persons.

3 26. None of the public prosecutors with the authority to prosecute violations of  
4 Proposition 65 has commenced or is diligently prosecuting a cause of action against Defendants  
5 under Health & Safety Code §25249.5, *et seq.*, based on the claims asserted in any of CEH’s  
6 Notices regarding Lead in Sweet Potatoes.

7 27. Defendants both know and intend that individuals, including pregnant women and  
8 children, will consume Sweet Potatoes, thus exposing them to Lead.

9 28. Nevertheless, Defendants continue to expose consumers, including pregnant  
10 women and children, to Lead without prior clear and reasonable warnings regarding the  
11 carcinogenic or reproductive hazards of Lead.

12 29. CEH has engaged in good-faith efforts to resolve the claims alleged herein prior to  
13 filing this Complaint.

14 30. Any person “violating or threatening to violate” Proposition 65 may be enjoined in  
15 any court of competent jurisdiction. Health & Safety Code §25249.7. “Threaten to violate” is  
16 defined to mean “to create a condition in which there is a substantial probability that a violation  
17 will occur.” Health & Safety Code §25249.11(e). Proposition 65 provides for civil penalties not  
18 to exceed \$2,500 per day for each violation of Proposition 65.

19 **FIRST CAUSE OF ACTION**  
20 **(Violations of Health & Safety Code §25249.6)**

21 31. CEH realleges and incorporates by reference as if specifically set forth herein  
22 Paragraphs 1 through 30, inclusive.

23 32. By placing Sweet Potatoes into the stream of commerce, each Defendant is a  
24 person in the course of doing business within the meaning of Health & Safety Code §25249.11.

25 33. Lead is a chemical listed by the State of California as known to cause cancer, birth  
26 defects, and other reproductive harm.





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Dated: May 18, 2020

Respectfully submitted,

LEXINGTON LAW GROUP



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Howard Hirsch  
Attorneys for Plaintiff  
CENTER FOR ENVIRONMENTAL HEALTH