

## SUPPLEMENTAL 60-DAY NOTICE OF VIOLATION

California Safe Drinking Water and Toxic Enforcement Act

<b>Date:</b>	August 20, 2019
<b>To:</b>	President/ CEO - Lucky Supermarkets/ Lucky® Jay Simon, President/ Chief Executive Officer - Super Store Industries Nicole Pesco, Chief Executive Officer - The Save Mart Companies Nicole Perso, Chief Executive Officer-Lucky Stores, Inc. Nicole Pesco, Chief Executive Officer-Save Mart Supermarkets (a California Corporation) California Attorney General's Office District Attorney's Office for 58 Counties City Attorneys for San Francisco, San Diego, San Jose, Sacramento and Los Angeles
<b>From:</b>	Michael DiPirro

**This Supplemental Notice of Violation follows the original Notice of Violation dated April 24, 2018, and 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, you may contact the Office of Environmental Health Hazard Assessment's ("OEHHA") Proposition 65 Implementation Office at (916) 445-6900. Attached for your reference is a summary, "Appendix A: The Safe Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary," provided by the California Office of Environmental Health Hazard Assessment's ("OEHHA") (copies not provided to public enforcement agencies).**

This Supplemental Notice of Violation is provided by Michael DiPirro. I am a citizen of the State of California acting in the interest of the general public. I am dedicated to protecting the environment, promoting awareness of exposures to toxic chemicals in products sold in California, improving human health and supporting environmentally sound practices.

Identified below are specific examples of products recently purchased and/or witnessed as being available for purchase or use in California that are within the categories or types of offending products covered by this Notice. I believe and allege that the sale of the offending products also has occurred without the requisite Proposition 65 "clear and reasonable warnings" at one or more location and/or via other means including, but not limited to, transactions made over-the-counter, business-to-business, through the internet and/or via a catalog by the Violator(s) and other retailers and distributors of the manufacturer, including, but not limited to the retailer(s) and/or distributor(s) listed below.

**Description of Violations:**

<b>Violator(s):</b>	Lucky Supermarkets/ Lucky® Super Store Industries The Save Mart Companies	Lucky Stores, Inc. Save Mart Supermarkets (a Cal. Corp.)
<b>Toxic Chemicals:</b>	Polychlorinated Biphenyls ("PCBs") PCBs containing 60 or more percent chlorine by molecular weight are also known as Aroclor 1260. Exposures to PCBs occur from use of the products identified in this Notice.	
<b>Product Category:</b>	Bath Tissue; Toilet Paper	
<b>Non-exclusive Example of Type of Product<sup>1</sup>:</b>	Market Essentials Soft & Strong Bathroom Tissue 150 Sheets (UPC # 0-98487-30102-4) (Distributed by Save Mart; sold by Lucky®) Sunny Select Soft & Strong Bath Tissue Two-Ply (UPC # 7-17544-13021-5) (Distributed by Super Store Industries; sold by Lucky®)	
<b>Retailer(s):</b>	Lucky Supermarkets/ Lucky® The Save Mart Companies	
<b>Manufacturer(s)/ Distributor(s):</b>	Lucky Supermarkets/ Lucky® Super Store Industries The Save Mart Companies	
<b>Types of Harm:</b>	Cancer	
<b>Description of Exposure:</b>	These exposures occur in homes, some workplaces and everywhere else throughout California where these products are handled or used. As a result of the sales of these products, exposures to the listed chemical have been occurring without clear and reasonable warnings as required by Proposition 65.	
<b>Routes of Exposure:</b>	Dermal Reasonably foreseeable use of the products identified in this Notice of Violation results in human exposures to PCBs. The Products contain PCBs. The route of exposure for the violations is dermal absorption directly through the skin, especially anogenital skin, when consumers touch, use, or handle the products in ways that are intended and/or foreseeable.	
<b>Time Period of Exposure:</b>	The violations have been occurring as far back as April 24, 2015, and are continuing to this day.	

<sup>1</sup> The specifically identified examples of the types of products that are subject to this Notice are for the recipients' benefit to assist in their investigation of, among other things, the magnitude of potential exposures to the listed chemical from other items within the product categories/types listed herein. These examples are not meant to be an exhaustive or comprehensive identification of each specific offending product of the types listed under "Product Category." Further, it is this citizen's position that the alleged Violator(s) are obligated to continue to conduct in good faith an investigation into other specific products within the types or categories described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipients' custody or control) during the relevant period so as to ensure that the requisite toxic warnings were and are provided to California citizens prior to purchase.

**Resolution of Noticed Claims:** Based on the allegations set forth in this Notice of Violation, I intend to file a citizen enforcement lawsuit against the alleged Violator unless such Violator enters into a binding written agreement to: (1) recall products already sold; (2) take effective measures to prevent unwarned PCBs exposures from products sold in the future and to ensure that the requisite health hazard warnings are provided to those who have received such products; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health and Safety Code Section 25249(b). If the alleged Violator is interested in resolving this dispute without resorting to expensive and time-consuming litigation, please feel free to contact me through my counsel identified below. It should be noted that neither my counsel nor I can: (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 this Notice of Violation. Therefore, while reaching an agreement with me will resolve my claims, such agreement may not satisfy the public prosecutors.

**Please direct any inquiries regarding this Notice of Violation to Michael DiPirro through his counsel David Bush at Law Office of David R. Bush, 6761 Sebastopol Avenue, Suite 111, Sebastopol, CA 95472; Telephone: (707) 827-3311; E-mail: DRBush@DRBushlaw.com.**



## CERTIFICATE OF MERIT

Health & Safety Code § 25249.7(d)

I, David Bush, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day Notice of Violation in which it is alleged that the parties identified in the Notice of Violation have violated Health & Safety Code § 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney who represents the noticing party.
3. Members of my firm and I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies or other data regarding the alleged exposures to the listed chemical that are the subject of this 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 plaintiff's case can be established and the information did not prove that the alleged Violator(s) 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.

August 20, 2019



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David R. Bush  
Attorney for Michael DiPirro

**PROOF OF SERVICE**

I declare that:

I am employed in Sonoma County, California; my business address is 6761 Sebastopol Avenue, Suite 111, Sebastopol CA 95472. I am over the age of 18 years and not a party to the within cause.

On August 20, 2019, I served true copies of the following documents:

**60-DAY NOTICE OF VIOLATION OF CALIFORNIA SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT;**

**APPENDIX A: THE SAFE WATER AND TOXIC ENFORCEMENT ACT OF 1986**

**(PROPOSITION 65): A SUMMARY; OEHHA/CAL EPA (only sent to the Violator(s));**

**CERTIFICATE OF MERIT; and**

**CERTIFICATE OF MERIT ATTACHMENTS (SERVED ONLY ON THE ATTORNEY GENERAL)**

On this date, I deposited fully prepaid and sealed envelopes containing the above- mentioned documents with the United States Postal Service, addressed to the following individuals as follows:

- On the alleged Violator(s) listed below via regular and First Class Certified Mail through the United States Postal Service by placing a true and correct copy in a sealed envelope, addressed to the entities listed below and providing each envelope to a United States Postal Service Representative:

Nicole Pesco, CEO The Save Mart Companies 1800 Standiford Avenue Modesto, CA 95350	President/ CEO Lucky Supermarkets/ Lucky® P.O. Box 4278 Modesto, CA 95352	Jay Simon, President/ CEO Super Store Industries 2800 West March Lane, Suite 210 Stockton, CA 95219
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Nicole Pesco, CEO Lucky Stores, Inc. 1800 Standiford Avenue Modesto, CA 95350	Nicole Pesco, CEO Save Mart Supermarkets 1800 Standiford Avenue Modesto, CA 95350
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- By providing copies to the addressees below electronically as follows:

<u>Electronically via the Attorney General website:</u> The Attorney General of the State of California	<u>Electronically to the following recipients at the following electronic mail addresses:</u>	Yen Deng Supervising Deputy District Attorney Santa Clara County <a href="mailto:epu@da.sccgov.org">epu@da.sccgov.org</a>	Jeffrey S. Rosell District Attorney Santa Cruz County <a href="mailto:Prop65DA@santacruzcounty.us">Prop65DA@santacruzcounty.us</a>	Christopher Dalbey Deputy District Attorney Santa Barbara County <a href="mailto:DAProp65@co.santa-barbara.ca.us">DAProp65@co.santa-barbara.ca.us</a>
Dije Ndreu Deputy District Attorney Monterey County <a href="mailto:Prop65DA@co.monterey.ca.us">Prop65DA@co.monterey.ca.us</a>	Phillip J. Cline District Attorney Tulare County <a href="mailto:Prop65@co.tulare.ca.us">Prop65@co.tulare.ca.us</a>	Anne Marie Schubert District Attorney Sacramento County <a href="mailto:Prop65@sacda.org">Prop65@sacda.org</a>	Gregory D. Totten District Attorney Ventura County <a href="mailto:daspecialops@ventura.org">daspecialops@ventura.org</a>	Stephan R. Passalacqua District Attorney Sonoma County <a href="mailto:jbarnes@sonoma-county.org">jbarnes@sonoma-county.org</a>
Gregory Alker Assistant District Attorney San Francisco City/County <a href="mailto:Gregory.alker@sfgov.org">Gregory.alker@sfgov.org</a>	Eric J. Dobroth Deputy District Attorney San Luis Obispo County <a href="mailto:edobroth@co.slo.ca.us">edobroth@co.slo.ca.us</a>	Gary Lieberstein District Attorney Napa County <a href="mailto:CEPD@countyofnapa.org">CEPD@countyofnapa.org</a>	Michelle Latimer Program Coordinator Lassen County <a href="mailto:mlatimer@co.lassen.ca.us">mlatimer@co.lassen.ca.us</a>	Tori Verber Salazar District Attorney San Joaquin County <a href="mailto:DAConsumer.Environmental@sjcda.org">DAConsumer.Environmental@sjcda.org</a>

Paul E. Zellerbach District Attorney Riverside County <a href="mailto:Prop65@rivcoda.org">Prop65@rivcoda.org</a>	Jeff W. Reisig District Attorney Yolo County <a href="mailto:cfepd@yolocounty.org">cfepd@yolocounty.org</a>		Stacey Grassini Deputy District Attorney Contra Costa County <a href="mailto:sgrassini@contracostada.org">sgrassini@contracostada.org</a>	Kathryn L. Turner Chief Deputy City Attorney San Diego County <a href="mailto:CityAttyCrimProp65@sandiego.gov">CityAttyCrimProp65@sandiego.gov</a>
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● As well as providing copies to the public enforcers by placing a true and correct copy in a sealed envelope, addressed to each party listed below, and served as follows:

By placing each envelope in a United States Postal Service mailbox, postage prepaid: The District Attorney for Each of the 58 counties in California not listed for electronic service; and the City Attorney for Los Angeles, San Diego, San Jose, San Francisco and Sacramento.

A list of addresses for each of these recipients is attached.

Executed on August 20, 2019, at Sebastopol, California.



D. Bush



### SERVICE LIST

The Honorable Nancy O'Malley Alameda County District Attorney 1225 Fallon Street, #900 Oakland, CA 94612	The Honorable Gilbert Otero Imperial County District Attorney 940 West Main Street, # 102 El Centro, CA 92243	The Honorable Candice Hooper San Benito County District Attorney 419 4 <sup>th</sup> Street Hollister, CA 95023-3801	The Honorable Richard Doyle Ofc of the City Attorney, San Jose 200 East Santa Clara Street, 16 <sup>th</sup> Floor San Jose, CA 95113
The Honorable Greg Cohen Tehama County District Attorney 444 Oak St # L Red Bluff, CA 96080	The Honorable Michael Atwell Alpine County District Attorney PO Box 248 Markleeville, CA 96120	The Honorable Jackie Lacey Los Angeles County District Attorney 211 West Temple St., #1200 Los Angeles, CA 90012	The Honorable Lawrence Allen Sierra County District Attorney PO Box 886 Downieville, CA 95936
The Honorable Michael Ramos San Bernardino County District Attorney 803 West 3rd Street, 6th Floor San Bernardino, CA 92415	The Honorable Eric L. Heryford Trinity County District Attorney PO Box 310 Weaverville, CA 96093	The Honorable Todd Riebe Amador County District Attorney 708 Court Street Jackson, CA 95642	The Honorable Donald Anderson Lake County District Attorney 255 North Forbes Street Lakeport, CA 95453
The Honorable David Linn Madera County District Attorney 209 West Yosemite Avenue Madera, CA 93637	The Honorable Summer Stephan San Diego County District Attorney 330 W. Broadway Street San Diego, CA 92101	The Honorable Jordan Funk Modoc County District Attorney 204 S. Court Street, # 202 Alturas, CA 96101	The Honorable Maggie Fleming Humboldt County District Attorney 825 5 <sup>th</sup> Street, 4 <sup>th</sup> Floor Eureka, CA 95501
The Honorable Michael Ramsey Butte County District Attorney 25 County Center Drive, #245 Oroville, CA 95965	The Honorable Edward Berberian Marin County District Attorney 3501 Civic Center Drive, # 145 San Rafael, CA 94903	The Honorable Tony Rackauckas Orange County District Attorney 401 Civic Center Drive West Santa Ana, CA 92701	The Honorable Dwayne R. Stewart Glenn County District Attorney PO Box 430 Willows, CA 95988
The Honorable Laura L. Krieg Tuolumne County District Attorney 423 North Washington Street Sonora, CA 95370	The Honorable Barbara Yook Calaveras County District Attorney 891 Mountain Ranch Road San Andreas, CA 95249	The Honorable Thomas K Cooke Mariposa County District Attorney PO Box 730 Mariposa, CA 95338	The Honorable Krishna A. Abrams Solano County District Attorney 675 Texas Street, Suite 4500 Fairfield, CA 94533
The Honorable Tori V. Salazar San Joaquin County District Attorney PO Box 990 Stockton, CA 95201	Del Norte County District Attorney 450 H Street, Room 171 Crescent City, CA 95531	The Honorable Matthew R. Beauchamp Colusa County District Attorney 346 5 <sup>th</sup> Street, #101 Colusa, CA 95932	The Honorable James Sanchez Ofc of Sacramento City Attorney 915 I Street, 4th Floor Sacramento, CA 95814-2608
The Honorable C. David Eyster Mendocino County District Attorney PO Box 1000 Ukiah, CA 95482	The Honorable Tom Hardy Inyo County District Attorney PO Box D Independence, CA 93526	The Honorable James Kirk Andrus Siskiyou County District Attorney 311 Fourth Street Yreka, CA 96097	The Honorable Stephanie Bridgett Shasta County District Attorney 1355 West St. Redding, CA 96001
The Honorable Patrick McGrath Yuba County District Attorney 215 Fifth Street Marysville, CA 95901	The Honorable Larry Morse II Merced County District Attorney 550 W. Main Street Merced, CA 95340	The Honorable Stephen Wagstaffe San Mateo County District Attorney 400 County Center Redwood City, CA 94603	The Honorable Clifford Newell Nevada County District Attorney 201 Commercial Street Nevada City, CA 95959-2506
The Honorable Birgit Fladager Stanislaus County District Attorney 832 12th Street, #300 Modesto, CA 95654	The Honorable Mike Feuer Office of the City Attorney, Los Angeles James K. Hahn City Hall East 200 N. Main St., 8 <sup>th</sup> Floor Los Angeles, CA 90012	The Honorable Vernon Pierson El Dorado County District Attorney 515 Main Street Placerville, CA 95667	The Honorable Lisa Green Kern County District Attorney 1215 Truxtun Avenue, 4 <sup>th</sup> Floor Bakersfield, CA 93301
The Honorable Keith L. Fagundes Kings County District Attorney 1400 West Lacey Boulevard Hanford, CA 93230	The Honorable Ronald Owens Placer County District Attorney 10810 Justice Center Drive, Suite 240 Roseville, CA 95678	The Honorable Amanda L. Hopper Sutter County District Attorney 463 2 <sup>nd</sup> St., #102 Yuba City, CA 95991	The Honorable Lisa A. Smittcamp Fresno County District Attorney 2220 Tulare Street, #1000 Fresno, CA 93721
The Honorable Tim Kendall Mono County District Attorney PO Box 617 Bridgeport, CA 93517	The Honorable David Hollister Plumas County District Attorney 520 Main Street, Room 404 Quincy, CA 95971	The Honorable Mara Elliott Office of the City Attorney, San Diego 1200 Third Avenue, Suite 1620 San Diego, CA 92101	