

## NOTICE OF VIOLATION

### California Safe Drinking Water and Toxic Enforcement Act

### Lead in Canned Sweet Potatoes, Including Canned Yams

June 2, 2020

This Notice of Violation (the "Notice") 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 302, Oakland, CA 94612, (510) 655-3900. CEH is a nonprofit corporation dedicated to protecting the environment, improving human health, and supporting environmentally sound practices. Caroline Cox is the Senior Scientist of and a responsible individual within CEH.

#### Description of Violation:

- Violators: The name and address of the violator is:  
  
**Moody Dunbar, Inc.**  
2000 Waters Edge Drive, Ste 21  
Johnson City, TN 37604-8312
- Time Period of Exposure: The violations have been occurring since at least January 23, 2017, and are ongoing.
- Provision of Proposition 65: This Notice covers the "warning provision" of Proposition 65, which is found at California Health and Safety Code Section 25249.6.
- Chemical(s) Involved: The names of the listed chemicals involved in these violations are lead and lead compounds ("Lead"). Exposures to Lead occur from consumption of the products identified in this Notice.
- Type of Product: The specific type of product causing these violations is canned sweet potatoes, including canned yams. A non-exclusive example of this specific type of product is Kroger Cut Yams – Sweet Potatoes in Syrup UPC No. 0-11110-84604-4.

- Description of Exposure: This Notice addresses consumer exposures to Lead. Consumption of the products identified in this Notice results in human exposures to Lead. The products contain Lead. The primary route of exposure for the violations is direct ingestion when consumers eat the products, either on their own or as an ingredient in other food. These exposures occur in homes and everywhere else throughout California where the products are consumed. No clear and reasonable warning is provided with these products regarding the carcinogenic or reproductive hazards of Lead.

#### **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 or reformulate such products to eliminate the Lead exposures; 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 the presence or potential presence of Lead in canned sweet potatoes, including canned yams; purchase and sales information for such products; efforts to comply with Proposition 65 with respect to such products; communications with any person relating to the presence or potential presence of Lead in such products; and representative exemplars of each unit of any such products sold by the alleged violator in the year preceding this Notice through the date of any trial of the claims alleged in this Notice.

Please direct any inquiries regarding this Notice to CEH's counsel Howard Hirsch at Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117, (415) 913-7800, [hhirsch@lexlawgroup.com](mailto:hhirsch@lexlawgroup.com).

**CERTIFICATE OF MERIT**

**Health & Safety Code § 25249.7(d)**

I, Howard Hirsch, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the parties identified in the notice have 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.

June 2, 2020



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Howard Hirsch  
Attorney for CENTER FOR  
ENVIRONMENTAL HEALTH

1 **PROOF OF SERVICE**

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3 I, Nick Redfield, declare:

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  
nredfield@lexlawgroup.com.

7 On June 2, 2020, I served the following document(s) on all interested parties in this action  
8 by placing a true copy thereof in the manner and at the addresses indicated below:

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

11 **CERTIFICATE OF MERIT;** and

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

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

19 *Please see attached service list.*

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

23 Stacey Grassini, Deputy District Attorney  
24 Contra Costa County  
25 900 Ward Street  
26 Martinez, CA 94553  
27 sgrassini@contracostada.org

28 Allison Haley, District Attorney  
Napa County  
1127 First Street, Suite C  
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CEPD@countyofnapa.org

Michelle Latimer, Program Coordinator  
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Phillip J. Cline, District Attorney  
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1 Paul E. Zellerbach, District Attorney  
2 Riverside County  
3 4075 Main Street  
4 Riverside, CA 92501  
5 Prop65@rivcoda.org

6 Jeff W. Reisig, District Attorney  
7 Yolo County  
8 301 Second Street  
9 Woodland, CA 95695  
10 cfepd@yolocounty.org

11 Dije Ndreu, Deputy District Attorney  
12 Monterey County  
13 1200 Aguajito Road  
14 Monterey, CA 93940  
15 Prop65DA@co.monterey.ca.us

16 Tori Verber Salazar, District Attorney  
17 San Joaquin County  
18 222 E. Weber Avenue, Room 202  
19 Stockton, CA 95202  
20 DAConsumer.Environmental@sjcda.org

21 Christopher Dalbey, Deputy District  
22 Attorney, Santa Barbara County  
23 1112 Santa Barbara Street  
24 Santa Barbara, CA 93101  
25 DAProp65@co.santa-barbara.ca.us

26 San Francisco City Attorney's Office  
27 City Hall, Room 234  
28 1 Dr. Carlton B. Goodlett Place  
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Jeffrey S. Rosell, District Attorney  
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Nancy O'Malley, District Attorney  
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7776 Oakport Street, Suite 650  
Oakland, CA 94621  
CEPDPProp65@acgov.org

Office of the District Attorney  
Calaveras County  
891 Mountain Ranch Road  
San Andreas, CA 95249  
Prop65Env@co.calaveras.ca.us

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

Executed on June 2, 2020 at San Francisco, California.



Nick Redfield

## **SERVICE LIST**

District Attorney of Alpine County  
P.O. Box 248  
Markleeville, CA 96120

District Attorney of Amador County  
708 Court Street, Ste. 202  
Jackson, CA 95642

District Attorney of Butte County  
Administration Building  
25 County Center Drive  
Oroville, CA 95965

District Attorney of Colusa County  
346 Fifth Street, Suite 101  
Colusa, CA 95932

District Attorney of Del Norte County  
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Crescent City, CA 95531

District Attorney of El Dorado County  
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P.O. Box 430  
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Eureka, CA 95501

District Attorney of Imperial County  
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El Centro, CA 92243

District Attorney of Inyo County  
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Bakersfield, CA 93301

District Attorney of Kings County  
1400 West Lacey Blvd.  
Hanford, CA 93230

District Attorney of Lake County  
255 N. Forbes Street  
Lakeport, CA 95453

District Attorney of Los Angeles County  
Hall of Justice  
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Los Angeles, CA 90012-3210

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209 West Yosemite Avenue  
Madera, CA 93637

District Attorney of Marin County  
3501 Civic Center Drive, Rm. 130  
San Rafael, CA 94903

District Attorney of Mariposa County  
P.O. Box 730  
Mariposa, CA 95338

District Attorney of Mendocino County  
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Ukiah, CA 95482

District Attorney of Merced County  
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Merced, CA 95340

District Attorney of Modoc County  
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Alturas, CA 96101-4020

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District Attorney of Nevada County  
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Nevada City, CA 95959

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District Attorney of Shasta County  
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Fairfield, CA 94533

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Modesto, CA 95354

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Yuba City, CA 95991

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Weaverville, CA 96093

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Phillip J. Cline, District Attorney  
Tulare County  
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Visalia, CA 93291

California Attorney General's Office  
Attention: Proposition 65 Coordinator and  
Robert Thomas  
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P.O. Box 70550  
Oakland, CA 94612-0550

Peg Carew Toledo, Counsel for Moody Dunbar  
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