



July 20, 2022

**NOTICE OF VIOLATION OF  
CALIFORNIA HEALTH & SAFETY CODE § 25249.5 ET SEQ.**

Attorney General Rob Bonta  
c/o Proposition 65 Coordinator  
Office of the Attorney General  
P.O. Box 70550  
Oakland, CA 94612-0550

Re: **Cadmium in Sunflower Seed Butter Products**

Dear Attorney General,

*As You Sow* (“AYS”) is a 501(c)(3) non-profit corporation dedicated to, among other causes, toxics reduction, the promotion of and improvement of human health, the improvement of worker and consumer rights, environmental education and the protection of the environment, and corporate accountability. AYS is based in Berkeley, California, and was incorporated in 1992 under the laws of the State of California.

AYS has documented violations of California’s Safe Drinking Water & Toxic Enforcement Act of 1986 (“Proposition 65”), codified at Health & Safety Code section 25249.5 et seq; specifically Section 25249.6, which 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 ...” This letter serves to provide notification of these violations to The Kroger Co. and public enforcement agencies. Pursuant to section 25249.7(d) of the statute, AYS intends to bring an enforcement action sixty days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

A summary of the statute and its implementing regulations, which was prepared by the lead agency designated under the statute, is enclosed with the notices served upon the violator(s). The specific details of the violations that are the subject of this notice are provided below.

**Alleged violator(s).** The names of the violator(s) covered by this notice are:

- The Kroger Co.

**Chemical(s).** These violations involve exposures to cadmium from the products listed below. The State of California has officially listed cadmium as cadmium is known to cause cancer and birth defects or reproductive harm. *See* Chemicals Known to the State to Cause Cancer or Reproductive Toxicity, available at [http://oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://oehha.ca.gov/prop65/prop65_list/Newlist.html).

**Consumer products.** The products that are the subject of this notice are sunflower seed butters that contain cadmium and are, at any time, manufactured, distributed, or sold by the alleged violator(s), including but not limited to the following:

- Simple Truth Organic Sunflower Butter

which are manufactured, distributed and/or sold in California by The Kroger Co..

**Route of exposure.** Use of the products identified in this notice result in human exposures to cadmium. The route of exposure is ingestion. No clear and reasonable warning is provided with the products regarding the health hazards of cadmium.

**Duration of violation.** These ongoing violations have occurred on every day since at least July 20, 2021, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic cadmium levels are removed from the products.

Pursuant to Title 11, Cal. Code Regs. section 3100, a certificate of merit is attached hereto.

In keeping with its public interest mission and to expeditiously rectify this ongoing violation of California law, *As You Sow* is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation. If you are interested in discussing this issue, please contact Jonathan Kirkland at [jkirkland@asyousow.org](mailto:jkirkland@asyousow.org) or (510) 735-8158 x734.

Sincerely,

A handwritten signature in black ink, appearing to read 'Danielle Fugere', with a stylized flourish at the end.

Danielle Fugere

## CERTIFICATE OF MERIT

(for *As You Sow*'s Notice of Proposition 65 Violation on The Kroger Co.)

I, Jonathan Kirkland, declare:

This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the parties in the notice have violated section 25249.6 of the Health and Safety Code by failing to provide clear and reasonable warnings.

I am Staff Attorney of the noticing party.

I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding exposure to the listed chemical that is the subject of the action.

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 that the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.

The copy of this Certificate of Merit served on the Attorney General has attached to it factual information sufficient to establish the basis for this certificate, including the information identified in section 25249.7(h)(2) of the Health and Safety Code, 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: July 20, 2022



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Jonathan Kirkland

Enclosure (Attorney General Copy only)

## CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States and over the age of 18 years. My business address is: Main Post Office, P.O. Box 751, Berkeley, CA 94701.

On July 20, 2022, I served the following documents:

- Notice of Violation of California Health & Safety Code section 25249.5 et seq.
- Certificate of Merit
- “The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary”

on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below, and depositing it at a United States Postal Service Office for delivery by Certified Mail:

COMPANY’S ADDRESS	The Kroger Co. c/o Corporation Service Company 3366 Riverside Drive, Suite 103 Upper Arlington, OH 43221
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On July 20, 2022, I served the following documents:

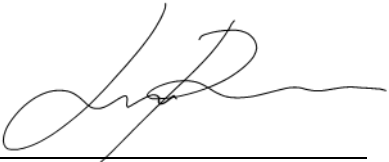
- Notice of Violation of California Health & Safety Code section 25249.5 et seq.
- Certificate of Merit

on each of the District Attorneys on the service list attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the service list attached hereto and depositing it at a United States Postal Service mail box for delivery by First Class Mail.

On July 20, 2022, I served the following documents on the Attorney General using the Attorney General’s Proposition 65 electronic Notice Filing Form (<https://oag.ca.gov/prop65/add-60-day-notice>):

- Notice of Violation of California Health & Safety Code section 25249.5 et seq.
- Certificate of Merit, including Supporting Documentation Required by Title 11, C.C.R. § 3102

Executed on July 20, 2022, at Berkeley, California.

  
\_\_\_\_\_  
Jesus Diaz, MPH

The Honorable Nancy E. O'Malley  
Alameda County District Attorney  
1225 Fallon Street, Room 900  
Oakland, CA 94612

The Honorable Dwayne Stewart  
Glenn County District Attorney  
P.O. Box 430  
Willows, CA 95988

Mike Feuer  
Los Angeles City Attorney's Office  
City Hall East  
200 N. Main Street, Rm. 800  
Los Angeles, CA 90012

The Honorable Michael Atwell  
Alpine County District Attorney  
P.O. Box 248  
Markleeville, CA 96120

The Honorable Maggie Fleming  
Humboldt County District Attorney  
825 Fifth St., Floor 4  
Eureka, CA 95501

The Honorable Sally Moreno  
Madera County District Attorney  
209 West Yosemite Ave.  
Madera, CA 93637

The Honorable Todd Riebe  
Amador County District Attorney  
708 Court St., Suite 202  
Jackson, CA 95642

The Honorable Gilbert Otero  
Imperial County District Attorney  
940 West Main St., Suite 102  
El Centro, CA 92243

The Honorable Lori Frugoli  
Marin County District Attorney  
3501 Civic Center Dr., Room 145  
San Rafael, CA 94903-4164

The Honorable Michael Ramsey  
Butte County District Attorney  
25 County Center Drive  
Administration Building  
Oroville, CA 95965

The Honorable Thomas L. Hardy  
Inyo County District Attorney  
P.O. Drawer D  
Independence, CA 93526

The Honorable Walter Wall  
Mariposa County District Attorney  
P.O. Box 730  
Mariposa, CA 95338

The Honorable Barbara Yook  
Calaveras County District Attorney  
891 Mountain Ranch Rd.  
San Andreas, CA 95249

The Honorable Thomas L. Hardy  
Inyo County District Attorney  
168 North Edwards Street  
Independence, CA 93526

The Honorable C. David Eyster  
Mendocino County District Attorney  
P.O. Box 1000  
Ukiah, CA 95482

The Honorable Matthew R.  
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Colusa County District Attorney  
346 Fifth St., Ste. 101  
Colusa, CA 95932

The Honorable Cynthia Zimmer  
Kern County District Attorney  
1215 Truxtun Ave.  
Bakersfield, CA 93301

The Honorable Kimberly Lewis  
Merced County District Attorney  
550 West Main Street  
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The Honorable Diana Becton  
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900 Ward Street  
Martinez, CA 94553

The Honorable Keith Fagundes  
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1400 West Lacey Blvd.  
Hanford, CA 93230

The Honorable Cynthia Campbell  
Modoc County District Attorney  
204 South Court St., Room 202  
Alturas, CA 96101-4020

The Honorable Katherine Micks  
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450 H St., Suite 171  
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The Honorable Susan Krones  
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255 North Forbes St.  
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The Honorable Jeanine Pacioni  
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P.O. Box 1131  
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The Honorable Vernon Pierson  
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778 Pacific Street  
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The Honorable S. Melyssah Rios  
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2950 Riverside Drive, Suite 102  
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The Honorable Allison Haley  
Napa County District Attorney  
1127 First Street, Suite C  
Napa, CA 94559

The Honorable Lisa Smittcamp  
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2220 [Tulare St.](#), Suite 1000  
Fresno, CA 93721

The Honorable George Gascón  
Los Angeles County District Attorney  
211 West Temple St., Ste. 1200  
Los Angeles, CA 90012

The Honorable Jesse Wilson  
Nevada County District Attorney  
201 Commercial St.  
Nevada City, CA 95959

The Honorable Todd Spitzer  
Orange County District Attorney  
300 N. Flower St.  
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San Luis Obispo, CA 93408

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Sonoma County District Attorney  
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The Honorable Candice Hooper-  
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San Benito County District Attorney  
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Hollister, CA 95023

The Honorable Stephen M. Wagstaffe  
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400 County Center, Floor 3  
Redwood City, CA 94063

The Honorable Birgit Fladager  
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832 12th St., Ste. 300  
Modesto, CA 95353

The Honorable Jason Anderson  
San Bernardino County District  
Attorney  
303 West Third St.  
San Bernardino, CA 92415

The Honorable Joyce Dudley  
Santa Barbara County District  
Attorney  
1112 Santa Barbara St.  
Santa Barbara, CA 93101

The Honorable Amanda L. Hopper  
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463 Second St., #102  
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The Honorable Jeffrey S. Rosell  
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The Honorable Chesa Boudin  
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The Honorable Stephanie A. Bridgett  
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The Honorable Tori Verber Salazar  
San Joaquin County District Attorney  
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Stockton, CA 95201-0990

The Honorable J. Kirk Andrus  
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Yreka, CA 96097

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