



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 KeHe Distributors Inc. 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:

- KeHe Distributors Inc.

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.

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:

- Cadia Organic Sunflower Butter

which are manufactured, distributed and/or sold in California by KeHe Distributors Inc. Company.

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 or (510) 735-8158 x734.

Sincerely,

A handwritten signature in dark 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 KeHe Distributors Inc.)

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



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	KeHe Distributors Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange St Wilmington, DE 19801
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On July 20, 2022, I served the following documents:

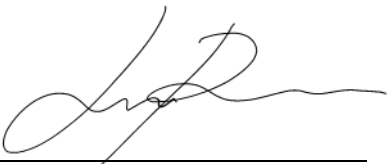
- Notice of Violation of California Health & Safety Code section 25249.5 et seq.
- Certificate of Merit

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
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Oakland, CA 94612

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The Honorable Sally Moreno
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