

1 Michael Freund SBN 99687
2 Law Office of Michael Freund
3 1919 Addison Street, Suite 105
4 Berkeley, CA 94704
5 Telephone: (510) 540-1992
6 Facsimile: (510) 540-5543

7 Attorney for Plaintiff David Steinman
8

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COURT

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SUMMONS ISSUED

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF CONTRA COSTA

11 DAVID STEINMAN

12 Plaintiff,

13 v.

14 MW POLAR FOODS, INC. and
15 DOES 1-100

16 Defendants.
17

Case No.

C 12-01327

COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF
AND CIVIL PENALTIES

[Miscellaneous Civil Complaint (42)]
Proposition 65, Health & Safety Code
Section 25249.5 et seq.

18
19
20 Plaintiff David Steinman hereby alleges:

21
22
23 INTRODUCTION

24
25 1. Plaintiff David Steinman (hereinafter "plaintiff" or "David Steinman") brings this
26 action as a private attorney general and in the public interest pursuant to Health & Safety Code
27 section 25249.7 (d). This complaint seeks injunctive and declaratory relief and civil penalties to
28 remedy MW Polar Foods, Inc.'s ("MW Polar Foods") failure to warn California consumers of their

1 exposure to lead from ingestion of MW Polar Oysters, Fancy Whole ("Covered Product"). The
2 Covered Product exposes people to a lead. Lead is a chemical known to the State of California to
3 cause cancer, birth defects and other reproductive harm. Based on the Safe Drinking Water and
4 Toxic Enforcement Act of 1986 (Health & Safety Code Section 25249.5 et seq.) also known as
5 "Proposition 65," businesses with ten or more employees must provide a "clear and reasonable
6 warning" prior to exposing persons to certain listed chemicals, including lead.
7

8 II

9 PARTIES

10
11 2. Plaintiff David Steinman is a committed environmentalist, journalist, consumer health
12 advocate, publisher and author. His major books include Diet for a Poisoned Planet (1990, 2007);
13 The Safe Shopper's Bible (1995); Living Healthy in a Toxic World (1996); and Safe Trip to Eden:
14 Ten Steps to Save the Planet Earth from Global Warming Meltdown (2007). Through this legal
15 action, Mr. Steinman seeks to eliminate or substantially reduce exposure to lead by California
16 consumers.
17

18 3. Defendant MW Polar Foods is a business entity that employs ten or more persons in the
19 course of doing business for the purpose of Proposition 65. MW Polar Foods manufactures,
20 distributes and/or sells the Covered Product.
21

22 4. Defendants Does 1-100, are named herein under fictitious names, as their true names and
23 capacities are unknown to Plaintiff. David Steinman is informed and believes, and thereon alleges,
24 that each of said Docs is responsible, in some actionable manner, for the events and happenings
25 hereinafter referred to, either through said defendant's conduct, or through the conduct of its agents,
26 servants or employees, or in some other manner, causing the harms alleged by plaintiff in this
27
28

1 complaint. When said true names and capacities of Does are ascertained, David Steinman will seek
2 leave to amend this complaint to set forth the same.

3 4 III

5 JURISDICTION AND VENUE

6 5. This Court has jurisdiction pursuant to California Constitution Article VI, section 10
7 because this case is a cause not given by statute to other trial courts.

8 6. David Steinman has performed any and all conditions precedent to the filing of a legal
9 action pursuant to Proposition 65 by serving by mail a Notice of Violation, dated February 24,
10 2012 to the Attorney General of the State of California, the State's district attorneys, the
11 appropriate city attorney's and to MW Polar Foods . A true and correct copy of the Notice of
12 Violation is attached herein as Exhibit A. More than 60 days have passed since these Notices
13 were mailed and no public enforcement entity has filed a complaint in this case.
14

15 7. This Court is the proper venue for the action because the causes of action have arisen in
16 the County of Contra Costa where some of the violations of law have occurred. Furthermore, this
17 Court is the proper venue under Code of Civil Procedure section 395.5 and Health & Safety Code
18 section 25249.7.
19

20 21 IV

22 STATUTORY BACKGROUND

23 A. Proposition 65

24 8. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute
25 passed as "Proposition 65" by an overwhelming majority vote of the people in November of 1986.
26

27 9. The warning requirement of Proposition 65 is contained in Health & Safety Code section
28 25249.6, which provides:

1 No person in the course of doing business shall knowingly and intentionally expose any
2 individual to a chemical known to the state to cause cancer or reproductive toxicity without first
3 giving clear and reasonable warning to such individual, except as provided in Section 25249.10.

4 10. Implementing regulations for Proposition 65 provide that warnings are required for
5 consumer product exposures. A "consumer product exposure is an exposure which results from a
6 person's acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a
7 consumer good, or any exposure that results from receiving a consumer service." 27 CCR section
8 25601 (b).

9 11. Whenever a clear and reasonable warning is required under Health & Safety Code section
10 25249.6, the "method employed to transmit the warning must be reasonably calculated considering
11 the alternative methods available under the circumstances, to make the warning message available
12 prior to exposure." 27 CCR section 25601 (a). The warning requirement may be satisfied by a
13 warning that appears on a product's label or other labeling, shelf labeling, signs, a system of signs,
14 public advertising identifying the system and toll-free information services, or any other, system,
15 that provides clear and reasonable warnings. *Id.*, section 25601 (b) (1) (A)-(C).

16 12. Proposition 65 establishes a procedure by which the State is to develop a list of
17 chemicals "known to the State to cause cancer or reproductive toxicity." Health & Safety Code
18 section 25249.8. There is no duty to provide a clear and reasonable warning until 12-months after
19 the chemical was published on the State list. *Id.*, section 25249.10(b). Lead was listed as a
20 chemical known to the State of California to cause cancer on October 1, 1992 and as a chemical
21 known to the cause developmental toxicity, and male and female reproductive toxicity on February
22 27, 1987. Title 27, Cal. Code Regs., section 27001.

23 13. Proposition 65 may be enforced by any person in the public interest who provides notice
24 sixty days before filing suit to both the violator and designated law enforcement officials. The
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1 failure of law enforcement officials to file a timely complaint enables a citizen suit to be filed
2 pursuant to Health & Safety Code section 25249.7 (c).

3
4 14. Proposition 65 provides that any person "violating or threatening to violate" Proposition
5 65 may be enjoined in any court of competent jurisdiction. Health & Safety Code section 25249.7
6 (a). To "threaten to violate" means "to create a condition in which there is a substantial probability
7 that a violation will occur." Id., section 25249.11 (e). Furthermore, violators are subject to a civil
8 penalty of up to \$2,500 per day for each violation. Id., section 25249.7 (b).

9
10 V

11 **STATEMENT OF FACTS**

12 15. Defendant MW Polar Foods manufactures, distributes and/or sells the Covered Product
13 as set forth in Exhibit A. The Covered Product contains lead.

14 16. MW Polar Foods has knowingly and intentionally exposed numerous consumers
15 throughout California to lead from the Covered Product without providing a Proposition 65
16 warning. The company has at all times relevant hereto been aware that the Covered Product
17 contains lead and that persons using these products are exposed to this chemical. MW Polar Foods
18 manufactures, distributes and markets the Covered Product with knowledge that exposures to lead
19 occur.
20
21

22 17. MW Polar Foods has failed to provide users of the Covered Product with a clear and
23 reasonable warning that they are being exposed to a chemical known to the State of California to
24 cause cancer, birth defects or other reproductive harm.

25 /// /// ///

26 /// /// ///

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28 /// /// ///

1 **FIRST CAUSE OF ACTION**

2 **(Violation of section 25249.6 of the Health and Safety Code, Failure to Provide Clear**
3 **and Reasonable Warning under Proposition 65)**

4 18. David Steinman refers to paragraphs 1-17, inclusive, and incorporates them herein by this
5 reference.

6
7 19. By committing the acts alleged above, MW Polar Foods has, in the course of doing
8 business, knowingly and intentionally exposed people to a chemical known to the State of
9 California to cause cancer, birth defects or other reproductive harm without first giving clear and
10 reasonable warning to such individuals, within the meaning of Health & Safety Code section
11 25249.6.

12
13 20. Said violations render each defendant liable for civil penalties up to \$2,500 (two
14 thousand, five hundred dollars) per day, for each violation.

15 21. MW Polar Foods' continued violation of the law will irreparably harm David Steinman
16 and the public interest in whose behalf plaintiff brings this action, for which there is no adequate
17 remedy at law.

18 **SECOND CAUSE OF ACTION**

19 **(Declaratory Relief)**

20
21 22. David Steinman refers to paragraphs 1-21, inclusive, and incorporates them herein by
22 this reference.

23
24 23. There exists an actual controversy relating to the legal rights and duties of the parties,
25 within the meaning of Code of Civil Procedure section 1060, between plaintiff and defendant
26 concerning whether MW Polar Foods has exposed individuals to a chemical known to the State of
27 California to cause cancer, birth defects or other reproductive harm; without providing clear and
28 reasonable warning.

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VI

PRAYER

WHEREFORE plaintiff prays for relief as follows:

1. On the First Cause of Action, for civil penalties for each and every violation according to proof;
2. On the First Cause of Action, and pursuant to Health & Safety Code section 25249.7 (a), for such temporary restraining orders, preliminary and permanent injunctive orders, or other orders, prohibiting MW Polar Foods from exposing persons to lead without providing clear and reasonable warnings;
3. On the Second Cause of Action, for a declaratory judgment pursuant to Code of Civil Procedure section 1060 declaring:
 - a. that MW Polar Foods has exposed individuals to a chemical known to the State of California to cause cancer, birth defects or other reproductive harm;
4. On all Causes of Action, for reasonable attorneys' fees pursuant to section 1021.5 of the Code of Civil Procedure or the substantial benefit theory;
5. For costs of suit herein; and
6. For such other relief as the Court may deem just and proper.

Dated: May 30, 2012

By



Michael Freund
Attorney for David Steinman

LAW OFFICE OF
MICHAEL FREUND

1919 ADDISON STREET, SUITE 108
BERKELEY, CALIFORNIA 94704-1101

TEL (510) 540-1992
FAX (510) 540-3743
EMAIL FREUND1@AOL.COM

February 24, 2012

VIA CERTIFIED MAIL

Frederick Chio, CEO
MW Polar Foods, Inc.
15203 Shoemaker Ave.
Norwalk, CA 90650

Office of the California Attorney General
Proposition 65 Enforcement Reporting
1515 Clay Street, Suite 2000
P.O. Box 70550
Oakland, CA 94612-0550

Re: Notice of Violation Against MW Polar Foods, Inc. for Violation of California Health & Safety Code Section 25249.5 et seq.

Dear Addressees:

I represent David Steinman, a committed environmentalist, journalist, consumer health advocate, publisher and author. His major books include *Diet for a Poisoned Planet* (1990, 2007); *The Safe Shopper's Bible* (1995); *Living Healthy in a Toxic World* (1996); and *Safe Trip to Eden: Ten Steps to Save the Planet Earth from Global Warming Meltdown* (2007). Through this Notice of Violation, Mr. Steinman seeks to reduce consumer exposures to lead in the named product set forth herein.

This letter constitutes notification that MW Polar Foods, Inc. ("MW Polar Foods") has violated the warning requirement of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with section 25249.5 of the Health and Safety Code). The product that is the subject of this Notice of Violation and the chemical in the product identified as exceeding allowable levels are:

MW Polar Oysters, Fancy Whole – lead

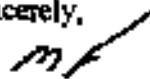
MW Polar Foods has manufactured, marketed, distributed and/or sold the listed product which has exposed and continues to expose numerous individuals within California to lead. This chemical was listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer on October 1, 1992 and as a chemical known to cause developmental toxicity, and male and female reproductive toxicity on February 27, 1987. The time period of these violations commenced one year after the listed dates above. The primary route of exposure has been through ingestion.

Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to certain listed chemicals. MW Polar Foods is in violation of Proposition 65 because it failed to provide a warning to consumers that they are being exposed to lead. (22 C.C.R. section 12601.) While in the course of doing business, the company is knowingly and intentionally exposing consumers to this chemical without first providing a clear and reasonable warning. (Health and Safety Code section 25249.6.) The method of warning should be a warning that appears on the product's label. 22 C.C.R. section 12601 (b)(1) (A). There are no warnings currently present on the company's label for this product.

Proposition 65 requires that notice and intent to sue be given to a violator 60-days before the suit is filed. With this letter, David Steinman gives notice of the alleged violation to the noticed party and the appropriate governmental authorities. This Notice of Violation covers all violations of Proposition 65 that are currently known to Mr. Steinman from information now available to us. Mr. Steinman is continuing his investigation that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, and referenced as Appendix A, has been provided to the noticed party.

If you have any questions, please contact my office at your earliest convenience.

Sincerely,



Michael Freund

cc: David Steinman

Attachments:

Certificate of Merit

Certificate of Service

OEHHA Summary to MW Polar Foods, Inc.

Additional Supporting Information for Certificate of Merit (to Attorney General only)

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7 (d)

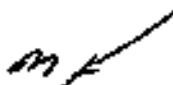
I, Michael Freund hereby declare:

1. This Certificate of Merit accompanies the attached Notice of Violation in which it is alleged that the party identified in the Notice has violated Health and Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party David Steinman. Mr. Steinman is a committed environmentalist, journalist, consumer health advocate, publisher and author. The Notice of Violation alleges that the party identified has exposed persons in California to lead from the specified consumer product. Please refer to the Notice of Violation for additional details regarding the product names and alleged violations.
3. 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 alleged exposure to the listed chemical that is the subject of the action. In particular, I have consulted with the chemists who conducted the laboratory testing for lead regarding this product and I have relied on the testing results. The testing was conducted by a reputable testing laboratory by experienced scientists. These facts, studies or other data derived through this investigation overwhelmingly demonstrate that the party identified in the Notice of Violation exposes persons to lead through ingestion.
4. Based on the information obtained through these consultants and on other information in my possession, I believe there is sufficient evidence that human exposures exist from exposure to the listed product from the noticed party. Furthermore, 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 will be able to establish any of the affirmative defenses set forth in the statute.

5. The copy of this Certificate of Merit served on the California Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & Safety Code Section 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.

Dated: February 23, 2012



Michael Freund
Attorney for David Steinman

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the County of Alameda. I am over the age of eighteen years and not a party to the within entitled action; my business address is 1915 Addison Street, Berkeley, California 94704. On February 27, 2012 I served the within:

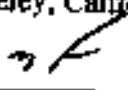
Notice of Violation and Certificate of Merit Against MW Polar Foods, Inc. for Violation of California Health & Safety Code Section 25249.5 et seq. (Supporting Documentation sent to Attorney General only)

on the parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box in Berkeley, California as follows:

See attached Service List

I, Michael Freund, declare under penalty of perjury that the foregoing is true and correct.

Executed on February 27, 2012 at Berkeley, California.



Michael Freund

SERVICE LIST

- District Attorney of Alameda County
1225 Fallon Street, Room 800
Oakland, CA 94612
- District Attorney of Colusa County
547 Market Street
Colusa, CA 95632
- District Attorney of Contra Costa County
627 Ferry Street
Martinez, CA 94553
- District Attorney of Alpine County
P.O. Box 248
Markleeville, CA 96120
- District Attorney of Del Norte County
480 H Street, Ste 171
Crescent City, CA 95531
- District Attorney of Amador County
708 Court Street, #202
Jackson, CA 95842
- District Attorney of Butte County
25 County Center Drive
Oroville, CA 95965
- District Attorney of El Dorado County
515 Main Street
Placerville, CA 95667
- District Attorney of Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249
- District Attorney of Fresno County
2220 Tulare Street, #1000
Fresno, CA 93721
- District Attorney of Glenn County
P.O. Box 430
Willows, CA 95688
- District Attorney of Kings County
1400 West Lacey
Hanford, CA 93230
- District Attorney of Lake County
265 N. Forbes Street
Lakeport, CA 95453
- District Attorney of Humboldt County
625 5th Street
Eureka, CA 95501
- District Attorney of Imperial County
939 Main Street
El Centro, CA 92243
- District Attorney of Lassen County
220 S. Lassen St., Ste 8
Susanville, CA 96130
- District Attorney of Inyo County
P.O. Drawer D
Independence, CA 93526
- District Attorney of Los Angeles County
210 W. Temple Street, Room 345
Los Angeles, CA 90012
- District Attorney of Madera County
208 West Yosemite Avenue
Madera, CA 93637
- District Attorney of Kern County
1215 Trudun Avenue
Bakersfield, CA 93301
- District Attorney of Marin County
3501 Civic Center Dr., Room 130
San Rafael, CA 94903
- District Attorney of Mono County
P.O. Box 817
Bridgeport, CA 93517
- District Attorney of Mariposa County
P.O. Box 730
Mariposa, CA 95338
- District Attorney of Monterey County
230 Church Street, Bldg. 2
Salinas, CA 93901
- District Attorney of Mendocino County
P.O. Box 1000
Ukiah, CA 95482
- District Attorney of Napa County
931 Parkway Mall
Napa, CA 94558
- District Attorney of Merced County
2222 "M" Street
Merced, CA 95340
- District Attorney of Nevada County
201 Church St., Suite 8
Nevada City, CA 95659
- District Attorney of Orange County
401 Civic Ctr Drive West
Santa Ana, CA 92701
- District Attorney of Modoc County
204 S Court Street
Alturas, CA 96101-4020
- District Attorney of Placer County
11552 "B" Avenue
Auburn, CA 95603
- District Attorney of San Bernardino County
316 N. Mountain View Avenue
San Bernardino, CA 92415
- District Attorney of Plumas County
520 Main Street, Room 404
Quincy, CA 95871
- District Attorney of San Diego County
330 West Broadway, Suite 1320
San Diego, CA 92101
- District Attorney of Riverside County
4075 Main Street
Riverside, CA 92501
- District Attorney of San Francisco County
850 Bryant Street, Rm 325
San Francisco, CA 94103
- District Attorney of Sacramento County
901 "G" Street
Sacramento, CA 95814
- District Attorney of San Joaquin County
P.O. Box 890
Stockton, CA 95201
- District Attorney of San Luis Obispo County
1050 Monterey St, Room 450
San Luis Obispo, CA 93406
- District Attorney of San Benito County
419 Fourth Street, 2nd Floor
Hollister, CA 95023

District Attorney of San Mateo County
400 County Cir, 3rd Fl
Redwood City, CA 94063

District Attorney of Sierra County
Courthouse, P.O. Box 457
Downsville, CA 95936

District Attorney of Santa Barbara County
1105 Santa Barbara Street
Santa Barbara, CA 93101

District Attorney of Siskiyou County
P.O. Box 980
Yreka, CA 96097

District Attorney of Solano County
676 Texas Street, Suite 4500
Fairfield, CA 94533

District Attorney of Santa Clara County
70 West Hedding Street, West Wing
San Jose, CA 95110

District Attorney of Santa Cruz County
701 Ocean Street, Room 200
Santa Cruz, CA 95060

District Attorney of Sonoma County
600 Administration Drive, Room 212J
Santa Rosa, CA 95403

District Attorney of Shasta County
1525 Court Street, Third Floor
Redding, CA 96001-1632

District Attorney of Stanislaus County
800 11th Street, Room 200
PO BOX 442
Modesto, CA 95353

District Attorney of Butte County
445 Second Street
Yuba City, CA 95991

District Attorney of Ventura County
800 South Victoria Ave
Ventura, CA 93005

District Attorney of Tehama County
P.O. Box 618
Red Bluff, CA 96080

District Attorney of Yuba County
301 Second Street
Woodland, CA 95695

District Attorney of Trinity County
P.O. Box 310
11 Court St
Weaverville, CA 96093

District Attorney of Yuba County
215 Fifth Street
Marysville, CA 95901

District Attorney of Tulare County
221 S. Mooney Ave, Room 224
Visalia, CA 93291

District Attorney of Tuolumne County
423 No. Washington Street
Sonora, CA 95370

San Jose City Attorney's Office
200 East Santa Clara Street
San Jose, CA 95113

Los Angeles City Attorney's Office
600 City Hall East
200 N. Main Street
Los Angeles, CA 90012

San Diego City Attorney's Office
1200 3rd Avenue #1020
San Diego, CA 92101

San Francisco City Attorney's Office
City Hall, Room 234
San Francisco, CA 94102

California Attorney General's Office
Attention: Proposition 65
Coordinator
1516 Clay Street, Suite 2000
P.O. Box 70580
Oakland, CA 94612

Chlo, CEO
Woods, Inc.
Semaker Ave.
Norwalk, CA 90650