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4 1919 Addison Street, Suite 105
5 Berkeley, CA 94704
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8 Attorneys for Plaintiffs David Steinman and The
9 Chemical Toxin Working Group

FILED

MAR - 7 2014

KIM LUREN, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: R. Smith, Deputy

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF MARIN**

12 **DAVID STEINMAN and THE CHEMICAL**
13 **TOXIN WORKING GROUP, INC., a**
14 **California non-profit corporation**

15 **Plaintiffs,**

16 **vs.**

17 **BUMBLE BEE FOODS, LLC and DOES 1-**
18 **100**

19 **Defendants.**

CASE NO. CIV1202604

FIRST AMENDED COMPLAINT RE:
CHICKEN OF THE SEA
INTERNATIONAL ET AL.

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

20 **DAVID STEINMAN and THE CHEMICAL**
21 **TOXIN WORKING GROUP, INC., a**
22 **California non-profit corporation**

23 **Plaintiffs,**

24 **vs.**

25 **CHICKEN OF THE SEA**
26 **INTERNATIONAL; TRI-UNION SEA**
27 **FOODS, LLC DBA CHICKEN OF THE SEA**
28 **INTERNATIONAL; and DOES 1-100**

Defendants.

1 Plaintiffs David Steinman and Chemical Toxin Working Group hereby allege:

2 **I**

3 **INTRODUCTION**

4 1. Plaintiff David Steinman (hereinafter "David Steinman") and Plaintiff The Chemical Toxin
5 Working Group, Inc. (hereinafter "CTWG") or collectively "Plaintiffs" bring this action as private
6 attorneys general and in the public interest pursuant to Health & Safety Code Section 25249.7 (d).
7 This complaint seeks injunctive and declaratory relief and civil
8 penalties to remedy Chicken of the Sea International and Tri-Union Sea Foods, LLC DBA
9 Chicken of the Sea International's ("Chicken of the Sea")'s failure to warn California consumers
10 of their exposure to lead and cadmium from ingestion of certain products manufactured
11 distributed, and/or sold by Chicken of the Sea. Causes of action for injunctive and declaratory
12 relief and civil penalties are brought by David Steinman as to the product Chicken of the Sea
13 Whole Oysters, and by CTWG as to the products Chicken of the Sea Minced Clams; and Chicken
14 of the Sea Whole Baby Clams ("Covered Products"). The Covered Products expose people to
15 lead. The product Chicken of the Sea Whole Oysters also exposes people to cadmium. Lead and
16 cadmium are chemicals known to the State of California to cause cancer, birth defects and other
17 reproductive harm. Based on the Safe Drinking Water and Toxic Enforcement Act of 1986
18 (Health & Safety Code Section 25249.5 *et seq.*) also known as "Proposition 65," businesses with
19 ten or more employees must provide a "clear and reasonable warning" prior to exposing persons
20 to certain listed chemicals, including lead and cadmium.

21 **II**

22 **PARTIES**

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

1 3. Plaintiff CTWG is a California non-profit corporation dedicated to reducing the amount
2 of chemical toxins in consumer products. CTWG was created by David Steinman.

3 4. Defendant Chicken of the Sea is a business entity that employs ten or more persons in the
4 course of doing business for the purpose of Proposition 65. Chicken of the Sea manufactures,
5 distributes and/or sells the Covered Products.

6 5. Defendants Does 1-100, are named herein under fictitious names, as their true names and
7 capacities are unknown to Plaintiffs. David Steinman and CTWG are informed and believe, and
8 thereon allege, that each of said Does is responsible, in some actionable manner, for the events and
9 happenings hereinafter referred to, either through said defendant's conduct, or through the conduct
10 of its agents, servants or employees, or in some other manner, causing the harms alleged by
11 plaintiffs in this complaint. When said true names and capacities of Does are ascertained, David
12 Steinman and CTWG will seek leave to amend this complaint to set forth the same.

13 **III**

14 **JURISDICTION AND VENUE**

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

17 7. David Steinman has performed any and all conditions precedent to the filing of a legal
18 action pursuant to Proposition 65 by serving by mail a Notice of Violation, dated February 24,
19 2012 to the Attorney General of the State of California, the State's district attorneys, the
20 appropriate city attorney's and to Chicken of the Sea. A true and correct copy of the Notice of
21 Violation is attached herein as Exhibit A. More than 60 days have passed since this Notice was
22 mailed and no public enforcement entity has filed a complaint in this case.

23 8. CTWG has performed any and all conditions precedent to the filing of a legal action
24 pursuant to Proposition 65 by serving by mail Notices of Violation, dated August 8, 2013 and
25 November 12, 2013 to the Attorney General of the State of California, the State's district
26 attorneys, the appropriate city attorney's, and to Chicken of the Sea. True and correct copies of
27 these Notices of Violation are attached herein as Exhibit B. More than 60 days have passed
28

1 since these Notices were mailed and no public enforcement entity has filed a complaint in this
2 case.

3 9. This Court is the proper venue for the action because the causes of action have arisen in
4 the County of Marin where some of the violations of law have occurred. Furthermore, this Court is
5 the proper venue under Code of Civil Procedure Section 395.5 and Health & Safety Code Section
6 25249.7.

7 IV

8 STATUTORY BACKGROUND

9 A. Proposition 65

10 10. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute
11 passed as “Proposition 65” by an overwhelming majority vote of the people in November of 1986.

12 11. The warning requirement of Proposition 65 is contained in Health & Safety Code
13 Section 25249.6, which provides:

14
15 No person in the course of doing business shall knowingly and intentionally expose any
16 individual to a chemical known to the state to cause cancer or reproductive toxicity without first
17 giving clear and reasonable warning to such individual, except as provided in Section 25249.10.

18 12. Implementing regulations for Proposition 65 provide that warnings are required for
19 consumer product exposures. A “consumer product exposure is an exposure which results from a
20 person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a
21 consumer good, or any exposure that results from receiving a consumer service.” 27 CCR Section
22 25601 (b).

23 13. Whenever a clear and reasonable warning is required under Health & Safety Code
24 Section 25249.6, the “method employed to transmit the warning must be reasonably calculated
25 considering the alternative methods available under the circumstances, to make the warning
26 message available prior to exposure.” 27 CCR Section 25601 (a). The warning requirement may
27 be satisfied by a warning that appears on a product’s label or other labeling, signs, a system of signs,
28 public advertising identifying the system and toll-free information services, or any other, system,
that provides clear and reasonable warnings. *Id.*, Section 25601 (b)(1)(A)-(C).

1 knowledge that exposures to lead and cadmium occur.

2 19. Chicken of the Sea has failed to provide users of the Covered Products with a clear and
3 reasonable warning that they are being exposed to a chemical known to the State of California to
4 cause cancer, birth defects or other reproductive harm.

5 **FIRST CAUSE OF ACTION**

6 **(Violation of Section 25249.6 of the Health and Safety Code, Failure to Provide Clear**
7 **and Reasonable Warning under Proposition 65)**

8 20. David Steinman and CTWG refer to paragraphs 1-19, inclusive, and incorporate them
9 herein by this reference.

10 21. By committing the acts alleged above, Chicken of the Sea has, in the course of doing
11 business, knowingly and intentionally exposed people to a chemical known to the State of
12 California to cause cancer, birth defects and other reproductive harm without first giving clear and
13 reasonable warning to such individuals, within the meaning of Health & Safety Code Section
14 25249.6.

15 22. Said violations render each defendant liable for civil penalties up to \$2,500 (two
16 thousand, five hundred dollars) per day, for each violation.

17 23. Chicken of the Sea's continued violation of the law will irreparably harm David
18 Steinman, CTWG, and the public interest in whose behalf plaintiffs bring this action, for which
19 there is no adequate remedy at law.

20 **SECOND CAUSE OF ACTION**

21 **(Declaratory Relief)**

22 24. David Steinman and CTWG refer to paragraphs 1-23, inclusive, and incorporate them
23 herein by this reference.

24 25. 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 plaintiffs and defendants
26 concerning whether Chicken of the Sea has exposed individuals to a chemical known to the State of
27 California to cause cancer, birth defects and other reproductive harm; without providing clear and
28 reasonable warning.

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VI

PRAYER

WHEREFORE plaintiffs pray 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 Chicken of the Sea from exposing persons to lead and cadmium 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 that Chicken of the Sea has exposed individuals to a chemical known to the State of California to cause, 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: March 4, 2014

By

Michael Freund by RRH

Michael Freund
Attorney for David Steinman and The Chemical Toxin
Working Group, Inc.

LAW OFFICE OF
MICHAEL FREUND

1919 ADDISON STREET, SUITE 105
BERKELEY, CALIFORNIA 94704-1101

TEL (510) 540-1992
FAX (510) 540-5543
EMAIL FREUND1@AOL.COM

February 24, 2012

VIA CERTIFIED MAIL

John Signorino, CEO
Chicken of the Sea International
4510 Executive Drive, Suite 300
San Diego, CA 92186

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

VIA PRIORITY MAIL

District Attorneys of All California Counties
and Select City Attorneys
(See Attached Certificate of Service)

Re: Notice of Violation Against Chicken of the Sea International 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 Chicken of the Sea International ("Chicken of the Sea") 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:

Chicken of the Sea Whole Oysters – lead

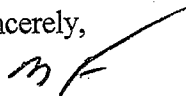
Chicken of the Sea has manufactured, marketed, distributed and/or sold the listed product which has exposed and continues to expose numerous individuals within California to lead. This chemical was listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer on October 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. Chicken of the Sea 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 Chicken of the Sea International

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 Chicken of the Sea International 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 900
Oakland, CA 94612

District Attorney of Colusa County
547 Market Street
Colusa, CA 95932

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
450 H Street, Ste 171
Crescent City, CA 95531

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

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 95988

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

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

District Attorney of Humboldt
County
825 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
209 West Yosemite Avenue
Madera, CA 93637

District Attorney of Kern County
1215 Truxtun 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 617
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 94559

District Attorney of Merced County
2222 "M" Street
Merced, CA 95340

District Attorney of Nevada County
201 Church St., Suite 8
Nevada City, CA 95959

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
11562 "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 95971

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 990
Stockton, CA 95201

District Attorney of San Luis
Obispo County
1050 Monterey St, Room 450
San Luis Obispo, CA 93408

District Attorney of San Benito
County
419 Fourth Street, 2nd Floor
Hollister, CA 95023

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

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

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

District Attorney of Siskiyou County
P.O. Box 986
Yreka, CA 96097

District Attorney of Solano County
675 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 Sutter County
446 Second Street
Yuba City, CA 95991

District Attorney of Ventura County
800 South Victoria Ave
Ventura, CA 93009

District Attorney of Tehama County
P.O. Box 519
Red Bluff, CA 96080

District Attorney of Yolo 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
800 City Hall East
200 N. Main Street
Los Angeles, CA 90012

San Diego City Attorney's Office
1200 3rd Avenue #1620
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
1515 Clay Street, Suite 2000
P.O. Box 70550
Oakland, CA 94612

John Signorino CEO & President
Chicken of the Sea International
4510 Executive Drive, Ste 300
San Diego, CA 92121-3029

Michael Freund & Associates

1919 Addison Street, Suite 105
Berkeley, CA 94704
Voice: 510.540.1992 • Fax: 510.540.5543

Michael Freund, Esq.
Ryan Hoffman, Esq.

OF COUNSEL:
Denise Ferkich Hoffman, Esq.

August 8, 2013

VIA CERTIFIED MAIL

VIA PRIORITY MAIL

Shue Wing Chan, President & CEO
Tri-Union Seafoods, LLC dba
Chicken of the Sea International
9330 Scranton Road, Suite 500
San Diego, CA 92121

District Attorneys of All California Counties
and Select City Attorneys
(See Attached Certificate of Service)

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 Tri-Union Seafoods, LLC, dba Chicken of the Sea
International for Violation of California Health & Safety Code Section
25249.5 et seq.**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent The Chemical Toxin Working Group, Inc., (“CTWG”) a California non-profit corporation dedicated to reducing the amount of chemical toxins in consumer products. CTWG was created by 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, CTWG seeks to reduce exposures to lead in products ingested by consumers.

This letter constitutes notification that Tri-Union Seafoods, LLC, dba Chicken of the Sea International (“Chicken of the Sea”) 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 products subject to this Notice of Violation and the chemical in the products identified as exceeding allowable levels are:

- Chicken of the Sea Minced Clams – Lead**
- Chicken of the Sea Whole Baby Clams - Lead**

Chicken of the Sea has manufactured, marketed, distributed and/or sold the above products which have exposed and continue to expose numerous individuals within California to lead. This

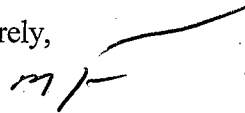
chemical was listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer on October 1, 1992 and as a chemical known to cause developmental toxicity, and male and female reproductive toxicity on February 27, 1987. These violations have occurred every day since at least August 8, 2010, and will continue every day until the lead is removed from the noticed products or until clear and reasonable warnings are provided. 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. Chicken of the Sea is in violation of Proposition 65 because the company 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 these products.

Proposition 65 requires that notice and intent to sue be given to a violator 60-days before the suit is filed. With this letter, CTWG gives notice of the alleged violations to the noticed party and the appropriate governmental authorities. This Notice of Violation covers all violations of Proposition 65 that are currently known to the noticing party from information now available. CTWG is continuing its 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: The Chemical Toxin Working Group, Inc., David Steinman

Attachments:

Certificate of Merit

Certificate of Service

OEHHA Summary to Tri-Union Seafoods, LLC dba Chicken of the Sea International
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 The Chemical Toxin Working Group, Inc. The Notice of Violation alleges that the party identified has exposed persons in California to lead from specified consumer products without providing a Proposition 65 warning. 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 laboratory who conducted the testing for lead regarding these products 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 the testing laboratory and on other information in my possession, I believe there is sufficient evidence that human exposures exist from exposure to the listed products 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: August 8, 2013



Michael Freund
Attorney for The Chemical Toxin Working Group,
Inc.

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 1919 Addison Street, Suite 105, Berkeley, California 94704.. On August 8, 2013 I served the within:

Notice of Violation Against Tri-Union Seafoods, LLC, dba Chicken of the Sea International for Violation of California Health & Safety Code Section 25249.5 et seq. and Certificate of Merit (Supporting Documentation sent to Attorney General only)

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 addressed to the names set forth on the Notice of Violation and on the attached Service List.

I, Michael Freund, declare under penalty of perjury that the foregoing is true and correct. Executed on August 8, 2013 at Berkeley, California



Michael Freund

Service List

- District Attorney, Alameda County
1225 Fallon Street, Suite 900
Oakland, CA 94612
- District Attorney, Alpine County
P.O. Box 248
Markleeville, CA 96120
- District Attorney, Amador County
708 Court Street, Suite 202
Jackson, CA 95642
- District Attorney, Butte County
25 County Center Drive, Suite 245
Oroville, CA 95965
- District Attorney, Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249
- District Attorney, Colusa County
346 Fifth Street Suite 101
Colusa, CA 95932
- District Attorney, Contra Costa County
900 Ward Street
Martinez, CA 94553
- District Attorney, Del Norte County
450 H Street, Room 171
Crescent City, CA 95531
- District Attorney, El Dorado County
515 Main Street
Placerville, CA 95667
- District Attorney, Fresno County
2220 Tulare Street, Suite 1000
Fresno, CA 93721
- District Attorney, Glenn County
Post Office Box 430
Willows, CA 95988
- District Attorney, Humboldt County
825 5th Street 4th Floor
Eureka, CA 95501
- District Attorney, Imperial County
940 West Main Street, Ste 102
El Centro, CA 92243
- District Attorney, Inyo County
230 W. Line Street
Bishop, CA 93514
- District Attorney, Kern County
1215 Truxtun Avenue
Bakersfield, CA 93301
- District Attorney, Kings County
1400 West Lacey Boulevard
Hanford, CA 93230
- District Attorney, Lake County
255 N. Forbes Street
Lakeport, CA 95453
- District Attorney, Lassen County
220 South Lassen Street, Ste. 8
Susanville, CA 96130
- District Attorney, Los Angeles County
210 West Temple Street, Suite 18000
Los Angeles CA 90012
- District Attorney, Madera County
209 West Yosemite Avenue
Madera, CA 93637
- District Attorney, Marin County
3501 Civic Center Drive, Room 130
San Rafael, CA 94903
- District Attorney, Mariposa County
Post Office Box 730
Mariposa, CA 95338
- District Attorney, Mendocino County
Post Office Box 1000
Ukiah, CA 95482
- District Attorney, Merced County
550 W. Main Street
Merced, CA 95340
- District Attorney, Modoc County
204 S Court Street, Room 202
Alturas, CA 95701-4020
- District Attorney, Mono County
Post Office Box 617
Bridgeport, CA 93517
- District Attorney, Monterey County
Post Office Box 1131
Salinas, CA 93902
- District Attorney, Napa County
931 Parkway Mall
Napa, CA 94559
- District Attorney, Nevada County
110 Union Street
Nevada City, CA 95959
- District Attorney, Orange County
401 West Civic Center Drive
Santa Ana, CA 92701
- District Attorney, Placer County
10810 Justice Center Drive, Ste 240
Roseville, CA 95678
- District Attorney, Plumas County
520 Main Street, Room 404
Quincy, CA 95971
- District Attorney, Riverside County
3960 Orange Street
Riverside, CA 92501
- District Attorney, Sacramento County
901 "G" Street
Sacramento, CA 95814
- District Attorney, San Benito County
419 Fourth Street, 2nd Floor
Hollister, CA 95023
- District Attorney, San Bernardino County
316 N. Mountain View Avenue
San Bernardino, CA 92415-0004
- District Attorney, San Diego County
330 West Broadway, Suite 1300
San Diego, CA 92101
- District Attorney, San Francisco County
850 Bryant Street, Suite 322
San Francisco, CA 94103
- District Attorney, San Joaquin County
222 E. Weber Ave. Rm. 202
Stockton, CA 95202
- District Attorney, San Luis Obispo County
1035 Palm St, Room 450
San Luis Obispo, CA 93408
- District Attorney, San Mateo County
400 County Ctr., 3rd Floor
Redwood City, CA 94063
- District Attorney, Santa Barbara County
1112 Santa Barbara Street
Santa Barbara, CA 93101
- District Attorney, Santa Clara County
70 West Hedding Street
San Jose, CA 95110
- District Attorney, Santa Cruz County
701 Ocean Street, Room 200
Santa Cruz, CA 95060
- District Attorney, Shasta County
1355 West Street
Redding, CA 96001
- District Attorney, Sierra County
PO Box 457
Downieville, CA 95936
- District Attorney, Siskiyou County
Post Office Box 986
Yreka, CA 96097
- District Attorney, Solano County
675 Texas Street, Ste 4500
Fairfield, CA 94533
- District Attorney, Sonoma County
600 Administration Drive,
Room 212J
Santa Rosa, CA 95403
- District Attorney, Stanislaus County
832 12th Street, Ste 300
Modesto, CA 95354
- District Attorney, Sutter County
446 Second Street
Yuba City, CA 95991
- District Attorney, Tehama County
Post Office Box 519
Red Bluff, CA 96080
- District Attorney, Trinity County
Post Office Box 310
Weaverville, CA 96093
- District Attorney, Tulare County
221 S. Mooney Blvd., Room 224
Visalia, CA 93291
- District Attorney, Tuolumne County
423 N. Washington Street
Sonora, CA 95370
- District Attorney, Ventura County
803 South Victoria Ave, Suite 314
Ventura, CA 93009
- District Attorney, Yolo County
301 2nd Street
Woodland, CA 95695
- District Attorney, Yuba County
215 Fifth Street, Suite 152
Marysville, CA 95901
- Los Angeles City Attorney's Office
City Hall East
200 N. Main Street, Suite 800
Los Angeles, CA 90012
- San Diego City Attorney's Office
1200 3rd Avenue, Ste 1620
San Diego, CA 92101
- San Francisco, City Attorney
City Hall, Room 234
1 Dr Carlton B Goodlett PL
San Francisco, CA 94102
- San Jose City Attorney's Office
200 East Santa Clara Street,
16th Floor
San Jose, CA 95113

Michael Freund & Associates

1919 Addison Street, Suite 105
Berkeley, CA 94704
Voice: 510.540.1992 • Fax: 510.540.5543

Michael Freund, Esq.
Ryan Hoffman, Esq.

OF COUNSEL:
Denise Ferkich Hoffman, Esq.

November 12, 2013

VIA CERTIFIED MAIL

Shue Wing Chan, President & CEO
Tri-Union Seafoods, LLC dba
Chicken of the Sea International
9330 Scranton Road, Suite 500
San Diego, CA 92121

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

VIA PRIORITY MAIL

District Attorneys of All California Counties
and Select City Attorneys
(See Attached Certificate of Service)

Re: Notice of Violations of California Health & Safety Code Section 25249.5 et seq.

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent The Chemical Toxin Working Group, Inc., (“CTWG”) a California non-profit corporation dedicated to reducing the amount of chemical toxins in consumer products. CTWG was created by 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, CTWG seeks to reduce and/or eliminate exposures to cadmium ingested by consumers from oysters.

This letter constitutes notification that Tri-Union Seafoods, LLC, dba Chicken of the Sea (“Chicken of the Sea”) 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 subject to this Notice of Violation and the chemical in the product identified as exceeding allowable levels are:

Chicken of the Sea Whole Oysters - Cadmium

Chicken of the Sea has manufactured, marketed, distributed and/or sold the above product which has exposed and continues to expose numerous individuals within California to cadmium. This chemical was listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer on October 1, 1987 and as a chemical known to cause developmental toxicity, and

male reproductive toxicity on May 1, 1997. These violations have occurred every day since at least November 12, 2010, as well as every day since the product was introduced into the California marketplace and will continue every day until cadmium is removed from the noticed product, reduced to allowable levels or until clear and reasonable warnings are provided. The primary route of exposure has been through ingestion but may have also occurred through inhalation and/or dermal contact.

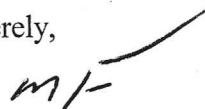
Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to certain listed chemicals. Chicken of the Sea is in violation of Proposition 65 because the company failed to provide a warning to consumers that they are being exposed to cadmium. While in the course of doing business, the company is knowingly and intentionally exposing consumers to this chemical without first providing a clear and reasonable warning. (Health and Safety Code § 25249.6.) The method of warning should be a warning that appears on the product's label. (Cal. Code Regs., tit. 27, § 25603.1, subd. (a).) Chicken of the Sea has not provided any Proposition 65 warnings on the company's label or any other appropriate warnings that persons handling, ingesting and/or otherwise using this product are being exposed to cadmium.

Proposition 65 requires that notice and intent to sue be given to a violator 60-days before the suit is filed. With this letter, CTWG gives notice of the alleged violations to the noticed party and the appropriate governmental authorities. This Notice of Violation covers all violations of Proposition 65 that are currently known to the noticing party from information now available. CTWG is continuing its 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.

CTWG is interested in a prompt resolution of this matter with an enforceable written agreement by Chicken of the Sea to (1) eliminate or reduce cadmium levels to allowable levels, or provide appropriate warnings on the labels of this product; and (2) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures and expensive and time consuming litigation.

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

Sincerely,



Michael Freund

cc: The Chemical Toxin Working Group, Inc.

Attachments:

Certificate of Merit
Certificate of Service
OEHHA Summary to Chicken of the Sea, International
Additional Supporting Information for Certificate of Merit (to Attorney General only)


CERTIFICATE OF MERIT

**Re: The Chemical Toxin Working Group Inc.'s Notice of Proposition 65 Violations
by Tri-Union Seafoods, LLC dba Chicken of the Sea International, Inc.**

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 The Chemical Toxin Working Group, Inc. The Notice of Violation alleges that the party identified has exposed persons in California to the listed chemical that is the subject of this Notice. Please refer to the Notice of Violation for additional details regarding the product name(s) and alleged violations.
3. 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 exposure to the listed chemical that is the subject of this Notice. I have reviewed the laboratory testing results for the chemical subject to this Notice and relied on these results. The testing was conducted by a reputable testing laboratory by experienced scientists. The facts, studies or other data derived through this investigation overwhelmingly demonstrate that the party identified in the Notice of Violation exposes persons to the listed chemical that is the subject of this Notice.
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: November 12, 2013



Michael Freund
Attorney for The Chemical Toxin Working
Group, Inc.

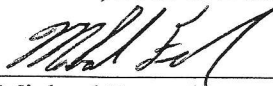
CERTIFICATE OF SERVICE

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 1919 Addison Street, Suite 105, Berkeley, California 94704. On November 12, 2013 I served the within:

Notice of Violation By Tri Union Seafoods, LLC dba Chicken of the Sea International for Violation of California Health & Safety Code Section 25249.5 et seq. and Certificate of Merit (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 addressed to the names set forth on the Notice of Violation and on the attached Service List.

I, Michael Freund, declare under penalty of perjury that the foregoing is true and correct. Executed on November 12, 2013 at Berkeley, California



Michael Freund

Notice of Violations of California Health & Safety Code §25249.5 et seq.

Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Los Angeles County 210 West Temple Street, Suite 18000 Los Angeles, CA 90012	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Francisco County 850 Bryant Street, Suite 322 San Francisco, CA 94103	District Attorney, Ventura County 800 South Victoria Ave, Suite 314 Ventura, CA 93009
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Joaquin County 222 E. Weber Ave. Rm. 202 Stockton, CA 95202	District Attorney, Yolo County 301 2 nd Street Woodland, CA 95695
District Attorney, Butte County 25 County Center Drive, Suite 245 Orville, CA 95965	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, San Luis Obispo County 1035 Palm St, Room 450 San Luis Obispo, CA 93408	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, San Mateo County 400 County Ctr., 3 rd Floor Redwood City, CA 94063	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Contra Costa County 900 Ward Street Martinez, CA 94553	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Santa Clara County 70 West Hedding Street San Jose, CA 95110	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett Pl San Francisco, CA 94102
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 95317	District Attorney, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	San Jose City Attorney's Office 200 East Santa Clara Street, 16 th Floor San Jose, CA 95113
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Monterey County Post Office Box 1131 Salinas, CA 93902	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Napa County 931 Parkway Mall Napa, CA 94559	District Attorney, Sierra County PO Box 457 Downieville, CA 95936	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Nevada County 110 Union Street Nevada City, CA 95959	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Sonoma County 600 Administration Drive, Room 212J Santa Rosa, CA 95403	
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Stanislaus County 832 12 th Street, Ste 300 Modesto, CA 95354	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Riverside County 3960 Orange Street Riverside, CA 92501	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Sacramento County 901 "G" Street Sacramento, CA 95814	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2 nd Floor Hollister, CA 95023	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
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