

**FILED**

**JUN 27 2012**

**KIM TURNER, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT**

*By: D. Taylor, Deputy*

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7 Attorney for Plaintiff David Steinman

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF MARIN**

10 **DAVID STEINMAN**

11 Case No. *CV 1202955*

12 **Plaintiff,**

13 **COMPLAINT FOR INJUNCTIVE  
14 AND DECLARATORY RELIEF  
15 AND CIVIL PENALTIES**

16 **v.**

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

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

19 **Defendants.**

20 Plaintiff David Steinman hereby alleges:

21 **I**

22 **INTRODUCTION**

23  
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 Bumble Bee Foods, LLC's ("Bumble Bee") failure to warn California consumers of their

1 exposure to lead from ingestion of Bumble Bee Premium Select Fancy Smoked Oysters (“Covered  
2 Product”). The Covered Product exposes people to a lead. Lead is a chemical known to the State of  
3 California to cause cancer, birth defects and other reproductive harm. Based on the Safe Drinking  
4 Water and Toxic Enforcement Act of 1986 (Health & Safety Code Section 25249.5 et seq.) also  
5 known as “Proposition 65,” businesses with ten or more employees must provide a “clear and  
6 reasonable 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 Bumble Bee is a business entity that employs ten or more persons in the course  
19 of doing business for the purpose of Proposition 65. Bumble Bee manufactures, distributes and/or  
20 sells the Covered Product.  
21

22 4. Defendants Does I-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 Does 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 Bumble Bee. 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 Marin where some of the violations of law have occurred. Furthermore, this Court is  
17 the proper venue under Code of Civil Procedure section 395.5 and Health & Safety Code section  
18 25249.7.  
19

20 **IV**

21 **STATUTORY BACKGROUND**

22 **A. Proposition 65**

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

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

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  
25  
26  
27  
28

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 Bumble Bee manufactures, distributes and/sells the Covered Product as set  
13 forth in Exhibit A. The Covered Product contains lead.

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

19 17. Bumble Bee has failed to provide users of the Covered Product with a clear and  
20 reasonable warning that they are being exposed to a chemical known to the State of California to  
21 cause cancer, birth defects or other reproductive harm.

22  
23 **FIRST CAUSE OF ACTION**

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

26 18. David Steinman refers to paragraphs 1-17, inclusive, and incorporates them herein by this  
27 reference.  
28

1 19. By committing the acts alleged above, Bumble Bee has, in the course of doing business,  
2 knowingly and intentionally exposed people to a chemical known to the State of California to cause  
3 cancer, birth defects or other reproductive harm without first giving clear and reasonable warning to  
4 such individuals, within the meaning of Health & Safety Code section 25249.6.  
5

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

8 21. Bumble Bee's continued violation of the law will irreparably harm David Steinman  
9 and the public interest in whose behalf plaintiff brings this action, for which there is no adequate  
10 remedy at law.  
11

## 12 SECOND CAUSE OF ACTION

### 13 (Declaratory Relief)

14 22. David Steinman refers to paragraphs 1-21, inclusive, and incorporates them herein by  
15 this reference.  
16

17 23. There exists an actual controversy relating to the legal rights and duties of the parties,  
18 within the meaning of Code of Civil Procedure section 1060, between plaintiff and defendant  
19 concerning:

20 a) whether Bumble Bee has exposed individuals to a chemical known to the State of  
21 California to cause cancer, birth defects or other reproductive harm; without providing clear and  
22 reasonable warning.  
23

## 24 VI

### 25 PRAYER

26 WHEREFORE plaintiff prays for relief as follows:  
27  
28

1 1. On the First Cause of Action, for civil penalties for each and every violation according to  
2 proof;

3  
4 2. On the First Cause of Action, and pursuant to Health & Safety Code section 25249.7 (a), for  
5 such temporary restraining orders, preliminary and permanent injunctive orders, or other orders,  
6 prohibiting Bumble Bee from exposing persons to lead without providing clear and reasonable  
7 warnings;

8  
9 3. On the Second Cause of Action, for a declaratory judgment pursuant to Code of Civil  
10 Procedure section 1060 declaring:

11 a. that Bumble Bee has exposed individuals to a chemical known to the State of California to  
12 cause cancer, birth defects or other reproductive harm;

13 4. On all Causes of Action, for reasonable attorneys' fees pursuant to section 1021.5 of the Code  
14 of Civil Procedure or the substantial benefit theory;

15 5. For costs of suit herein; and

16 6. For such other relief as the Court may deem just and proper.

17  
18 Dated: May 30, 2012

19 By



20  
21 \_\_\_\_\_  
22 Michael Freund  
23 Attorney for David Steinman  
24  
25  
26  
27  
28



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**

Chris Lischewski, CEO  
Bumble Bee Foods, LLC  
9655 Granite Ridge Drive, Suite 100  
San Diego, CA 92123

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 Bumble Bee Foods, LLC 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 Bumble Bee Foods, LLC ("Bumble Bee") 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:

**Bumble Bee Premium Select Fancy Smoked Oysters – lead**

Bumble Bee. 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. Bumble Bee 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 Bumble Bee Foods, LLC

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



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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 Bumble Bee Foods, LLC 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.

*mf*

\_\_\_\_\_  
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  
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515 Main Street  
Placerville, CA 95667

District Attorney of Calaveras  
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District Attorney of Fresno County  
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Fresno, CA 93721

District Attorney of Glenn County  
P.O. Box 430  
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District Attorney of Kings County  
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District Attorney of Lake County  
255 N. Forbes Street  
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Susanville, CA 96130

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Independence, CA 93526

District Attorney of Los Angeles  
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Madera, CA 93637

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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  
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Bridgeport, CA 93517

District Attorney of Mariposa  
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Mariposa, CA 95338

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District Attorney of Mendocino  
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District Attorney of San Mateo County  
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Redwood City, CA 94063

District Attorney of Sierra County  
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Marysville, CA 95901

District Attorney of Tulare County  
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Visalia, CA 93291

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San Jose, CA 95113

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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

Chris Lischewski, CEO  
Bumble Bee Foods, LLC  
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