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**ENDORSED
FILED
ALAMEDA COUNTY**

JUL 10 2013

CLERK OF THE SUPERIOR COURT
By Angela Yamsuan

8 Attorneys for Plaintiff The Chemical Toxin Working Group, Inc.

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF ALAMEDA**

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

15 **Plaintiff,**

16 **v.**

17 **JFE SHOJI TRADE AMERICA, INC.,**
18 **and DOES 1-100**

19 **Defendants.**

Case No. ^{AC} - 13 - 086874

**COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF AND
CIVIL PENALTIES**

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

20
21 Plaintiff The Chemical Toxin Working Group, Inc. hereby alleges:

22 **I**

23 **INTRODUCTION**

24 1. Plaintiff The Chemical Toxin Working Group, Inc. (hereinafter "Plaintiff" or "CTWG")
25 brings this action as a private attorney general enforcer and in the public interest pursuant to Health
26 & Safety Code section 25249.7, subdivision (d). This complaint seeks injunctive and declaratory
27 relief and civil penalties to remedy Defendants JFE Shoji Trade America, Inc., and Does 1-100
28 (hereinafter "JFE Shoji")'s failure to warn consumers that they have been exposed to lead from

Page 1 of 7

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF AND CIVIL PENALTIES

1 several of JFE SHOJI's seafood products. Lead is a chemical known to the State of California to
2 cause cancer, birth defects and other reproductive harm. Based on the Safe Drinking Water and
3 Toxic Enforcement Act of 1986 (Health & Safety Code section 25249.5 *et seq.*) also known as
4 "Proposition 65," businesses with ten or more employees must provide a "clear and reasonable
5 warning" prior to exposing persons to these chemicals.

6 II

7 PARTIES

8 2. Plaintiff CTWG is a California non-profit corporation dedicated to helping safeguard the
9 public from health hazards by to reducing the amount of chemical toxins in consumer products and
10 encouraging corporate responsibility. Through this legal action, CTWG seeks to eliminate or
11 substantially reduce exposure to lead by California consumers from JFE SHOJI's seafood products
12 as described herein.

13 3. Defendant JFE SHOJI is a business that distributes and/or sells seafood products that
14 have exposed users to lead in the State of California within the relevant statute of limitations period.
15 These seafood products are "Geisha Whole Baby Clams" and "Geisha Fancy Smoked Oysters in
16 Cottonseed Oil" (hereinafter "Covered Products"). JFE SHOJI is a company subject to Proposition
17 65 as it employs ten or more persons.

18 4. Defendants Does 1-100, are named herein under fictitious names, as their true names and
19 capacities are unknown to CTWG. CTWG is informed and believes, and thereon alleges, that each
20 of said Does is responsible, in some actionable manner, for the events and happenings hereinafter
21 referred to, either through said Defendant's conduct, or through the conduct of its agents, servants or
22 employees, or in some other manner, causing the harms alleged by CTWG in this complaint. When
23 said true names and capacities of Does are ascertained, CTWG will seek leave to amend this
24 complaint to set forth the same.

25 III

26 JURISDICTION AND VENUE

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

1 Regs., tit. 27, § 25602, subd. (b).)

2 12. Whenever a clear and reasonable warning is required under Health & Safety Code
3 section 25249.6, the "method employed to transmit the warning must be reasonably calculated
4 considering the alternative methods available under the circumstances, to make the warning
5 message available prior to exposure." (Cal. Code Regs., tit. 27, § 25601.) The warning requirement
6 may be satisfied by a warning that appears on a product's label or other labeling, shelf labeling,
7 signs, a system of signs, public advertising identifying the system and toll-free information services,
8 or any other, system, that provides clear and reasonable warnings. (Cal. Code Regs., tit. 27, §
9 25603.1, subd. (a)-(d).)

10 13. Proposition 65 establishes a procedure by which the State is to develop a list of
11 chemicals "known to the State to cause cancer or reproductive toxicity." (Health & Safety Code,
12 § 25249.8.) There is no duty to provide a clear and reasonable warning until 12-months after the
13 chemical was published on the State list. (Health & Safety Code, § 25249.10, subd. (b).) Lead
14 was listed as a chemical known to the State of California to cause developmental toxicity in the
15 fetus and male and female reproductive toxicity on February 27, 1987. Lead was listed as a
16 chemical known to the State of California to cause cancer on October 1, 1992. (Cal. Code Regs., tit.
17 27, § 27001.)

18 14. The Maximum Allowable Dose Level for lead as a chemical known to cause
19 developmental toxicity is 0.5 micrograms per day. (Cal. Code Regs., tit. 27, § 25805.) The No
20 Significant Risk Level for lead as a carcinogen is 15 micrograms per day. (Cal. Code Regs., tit.
21 27, § 25705.)

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

26 16. Proposition 65 provides that any person "violating or threatening to violate" Proposition
27 65 may be enjoined in any court of competent jurisdiction. (Health & Safety Code, § 25249.7,
28 subd. (a).) To "threaten to violate" means "to create a condition in which there is a substantial

1 probability that a violation will occur.” (Health & Safety Code, § 25249.11, subd. (e).)
2 Furthermore, violators are subject to a civil penalty of up to \$2,500 per day for each violation.
3 (Health & Safety Code, § 25249.7, subd. (b)(1).)
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V

STATEMENT OF FACTS

17. JFE SHOJI has distributed and/or sold the Covered Products containing lead to the State of California. Consumers have been ingesting these products for many years, without any knowledge of their exposure to lead, a very dangerous chemical.

18. For many years, JFE SHOJI has knowingly and intentionally exposed numerous persons to lead, without providing a Proposition 65 warning. Prior to CTWG’s Notice of Violation, JFE SHOJI failed to provide a warning on the label of the Covered Products. JFE SHOJI’s website does not contain any warning regarding lead contained in the Covered Products. Subsequent to issuing the Notice of Violation, CTWG provided JFE SHOJI with test results showing that the Covered Products contain levels of lead far greater than those permissible pursuant to Proposition 65. Despite being provided with these test results, JFE SHOJI continues to market and distribute the Covered Products without a warning. JFE SHOJI has at all times relevant hereto been aware that the Covered Products contained lead and that persons using these products have been exposed to the chemical. JFE SHOJI has been aware of the lead in the Covered Products and has failed to disclose the presence of this chemical to the public, who undoubtedly believed they have been ingesting totally healthy and pure products.

19. Both prior and subsequent to CTWG’s Notice of Violation, JFE SHOJI failed to provide consumers of the Covered Products with a clear and reasonable warning that they have been exposed to a chemical known to the State of California to cause cancer, birth defects and other reproductive harm.

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FIRST CAUSE OF ACTION

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

20. CTWG refers to paragraphs 1-19, inclusive, and incorporates them herein by this reference.

21. By committing the acts alleged above, JFE SHOJI has, in the course of doing business, knowingly and intentionally exposed users of the Covered Products to lead, a chemical known to the State of California to cause cancer, birth defects and other reproductive harm without first giving clear and reasonable warning to such individuals, within the meaning of Health & Safety Code section 25249.6.

22. Said violations render JFE SHOJI liable for civil penalties up to \$2,500 per day, for each violation.

SECOND CAUSE OF ACTION

(Declaratory Relief)

23. CTWG refers to paragraphs 1-22, inclusive, and incorporates them herein by this reference.

24. There exists an actual controversy relating to the legal rights and duties of the parties, within the meaning of Code of Civil Procedure section 1060, between CTWG and JFE SHOJI concerning whether JFE SHOJI has exposed individuals to a chemical known to the State of California to cause cancer, birth defects and other reproductive harm without providing clear and reasonable warning.

VI

PRAYER

WHEREFORE CTWG 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, subdivision (a), for such temporary restraining orders, preliminary and permanent injunctive orders,

1 or other orders, prohibiting JFE SHOJI from exposing persons to lead without providing clear and
2 reasonable warning;

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

5 a. that JFE SHOJI has exposed individuals to a chemical known to the State of
6 California to cause, birth defects and other reproductive harm without providing clear and
7 reasonable warning; and

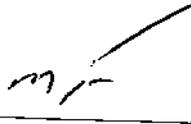
8 4. On all Causes of Action, for reasonable attorneys' fees pursuant to section 1021.5 of the
9 Code of Civil Procedure or the substantial benefit theory;

10 5. For costs of suit herein; and

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

12
13 Dated: July 8, 2013.

14
15 By



16
17 Michael Freund
18 Attorney for Environmental Research Center
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LAW OFFICE OF
MICHAEL FREUND

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

January 8, 2013

VIA CERTIFIED MAIL

Hitoshi Ino
JFE Shoji Trade America, Inc.
340 Golden Shore, Suite 450
Long Beach, CA 90802

VIA PRIORITY MAIL

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 JFE Shoji Trade America, Inc. 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, a California non-profit corporation dedicated to reducing the amount of chemical toxins in consumer products. The Chemical Toxin Working Group 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, The Chemical Toxin Working Group seeks to reduce consumer exposures to lead in the products set forth herein.

This letter constitutes notification that JFE Shoji Trade America, Inc. ("JFE Shoji") 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:

Geisha Whole Baby Clams – lead
Geisha Fancy Smoked Oysters in Cottonseed Oil – lead

JFE Shoji 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. 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. JFE Shoji 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, The Chemical Toxin Working Group 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. The Chemical Toxin Working Group 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

Attachments:

Certificate of Merit

Certificate of Service

OEHHA Summary to JFE Shoji Trade America, 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 The Chemical Toxin Working Group. 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: January 7, 2013



Michael Freund
Attorney for The Chemical Toxin Working Group

CERTIFICATE OF SERVICE

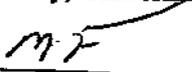
I am a citizen of the United States and a resident of the County of Alameda. I am over the age of eighteen years and not a party to the within entitled action. My business address is 1919 Addison Street, Suite 105, Berkeley, California 94704. On January 8, 2013 I served the within:

Notice of Violation Against JFE Shoji Trade America, Inc., 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, via electronic mail to the California Attorney General and 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 as follows:

See attached Service List

I, Michael Freund, declare under penalty of perjury that the foregoing is true and correct. Executed on January 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
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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
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- District Attorney, Santa Cruz County
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Santa Cruz, CA 95060
- District Attorney, Shasta County
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