

ENDORSED
FILED
ALAMEDA COUNTY

OCT 16 2013

CLERK OF THE SUPERIOR COURT
By Donnan Pharr
Deputy

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF ALAMEDA**

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

16 **Plaintiff,**

17 **vs.**

18 **CROWN PRINCE, INC. and DOES 1-100**
19 **Defendant.**

20 Case No. **RG13699240**

21 **COMPLAINT FOR INJUNCTIVE AND**
22 **DECLARATORY RELIEF AND CIVIL**
23 **PENALTIES**

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

27 Plaintiff Chemical Toxin Working Group hereby alleges:

28 **I**

INTRODUCTION

1. Plaintiff The Chemical Toxin Working Group, Inc. (hereinafter "Plaintiff" or "CTWG") brings this action as a private attorney general and in the public interest pursuant to Health & Safety Code section 25249.7, subdivision (d). This complaint seeks injunctive and declaratory relief and civil penalties to remedy the failure of Defendant Crown Prince, Inc. (hereinafter "Defendant" or "Crown Prince") to warn California consumers of their exposure to lead from ingestion of clams that were manufactured, distributed, and/or sold by Crown Prince to various California retailers who in turn sold them to California consumers. Lead is a chemical known to the State of California to cause cancer, birth defects and other reproductive harm. Pursuant to the

1 Safe Drinking Water and Toxic Enforcement Act of 1986 (Health & Safety Code Section 25249.5
2 et seq.) also known as "Proposition 65," businesses with ten or more employees must provide a
3 "clear and reasonable warning" prior to exposing persons to certain listed chemicals, including lead.
4

5 **II**

6 **PARTIES**

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

13 3. Plaintiff CTWG is a California non-profit corporation dedicated to reducing the
14 amount of chemical toxins in consumer products. CTWG was created by David Steinman, a
15 committed environmentalist, journalist, consumer health advocate, publisher and author. His major
16 books include Diet for a Poisoned Planet (1990, 2007); The Safe Shopper's Bible (1995); Living
17 Healthy in a Toxic World (1996); and Safe Trip to Eden: Ten Steps to Save the Planet Earth from
18 Global Warming Meltdown (2007). Through this legal action, CTWG seeks to eliminate or
19 substantially reduce exposure to lead by California consumers from the clams as described herein.

20 4. Defendant Crown Prince, Inc. is a business entity that employs ten or more persons in
21 the course of doing business for the purpose of Proposition 65.

22 5. Defendants Does 1-100, are named herein under fictitious names, as their true names and
23 capacities are unknown to Plaintiff. Plaintiff is informed and believe, and thereon allege, that each
24 of said Does is responsible, in some actionable manner, for the events and happenings hereinafter
25 referred to, either through said Defendants' conduct, or through the conduct of its agents, servants or
26 employees, or in some other manner, causing the harms alleged by Plaintiff in this complaint.
27 When said true names and capacities of Does are ascertained, Plaintiff will seek leave to amend this
28 complaint to set forth the same.

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III

JURISDICTION AND VENUE

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

7. CTWG has performed any and all conditions precedent to the filing of a legal action pursuant to Proposition 65 by serving by mail a Notice of Violation, dated March 5, 2013 to the Attorney General of the State of California, the State's district attorneys, the appropriate city attorney's, and to Crown Prince. A true and correct copy of this Notice of Violation is attached herein as Exhibit A. More than 60 days have passed since this Notice was mailed and no public enforcement entity has filed a complaint in this case.

8. This Court is the proper venue for the action because the causes of action have arisen in the County of Alameda where some of the violations of law have occurred. Furthermore, this Court is the proper venue under Code of Civil Procedure section 395.5 and Health & Safety Code section 25249.7.

IV

STATUTORY BACKGROUND

A. Proposition 65

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

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

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

11. Implementing regulations for Proposition 65 define expose as "to cause to ingest, inhale, contact via body surfaces or otherwise come into contact with a listed chemical." An individual may come into contact with a listed chemical through water, air, food, consumer products and any other environmental exposure as well as occupational exposures." (Cal. Code Regs., tit. 27,

1 § 25102, subd. (i.)

2 12. In this case, the exposures at issue are caused by consumer products. Implementing
3 regulations for Proposition 65 define a consumer product exposure as: "an exposure which results
4 from a person's acquisition, purchase, storage, consumption, or other reasonably foreseeable use of
5 a consumer good, or any exposure that results from receiving a consumer service." (Cal. Code
6 Regs., tit. 27, § 25602, subd. (b).)

7 13. Whenever a clear and reasonable warning is required under Health & Safety Code
8 section 25249.6, the "method employed to transmit the warning must be reasonably calculated
9 considering the alternative methods available under the circumstances, to make the warning
10 message available prior to exposure." (Cal. Code Regs., tit. 27, § 25601.) The warning requirement
11 may be satisfied by a warning that appears on a product's label or other labeling, shelf labeling,
12 signs, a system of signs, public advertising identifying the system and toll-free information services,
13 or any other, system, that provides clear and reasonable warnings. (Cal. Code Regs., tit. 27, §
14 25603.1, subd. (a)-(d).)

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

23 15. The Maximum Allowable Dose Level for lead as a chemical known to cause
24 developmental toxicity is 0.5 micrograms per day. (Cal. Code Regs., tit. 27, § 25805.) The No
25 Significant Risk Level for lead as a carcinogen is 15 micrograms per day. (Cal. Code Regs., tit.
26 27, § 25705.)

27 16. Proposition 65 may be enforced by any person in the public interest who provides
28 notice sixty days before filing suit to both the violator and designated law enforcement officials.

1 The 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, subdivisions (c) and (d).

3 17. Proposition 65 provides that any person "violating or threatening to violate" Proposition
4 65 may be enjoined in any court of competent jurisdiction. (Health & Safety Code, § 25249.7,
5 subd. (a).) To "threaten to violate" means "to create a condition in which there is a substantial
6 probability that a violation will occur." (Health & Safety Code, § 25249.11, subd. (e).)
7 Furthermore, violators are subject to a civil penalty of up to \$2,500 per day for each violation.
8 (Health & Safety Code, § 25249.7, subd. (b)(1).)

9
10 V

11 **STATEMENT OF FACTS**

12 18. Crown Prince manufactures, distributes and/or sells Crown Prince Baby Clams (smoked
13 in oil) to retailers in California, who in turn sell the product to the general public. Crown Prince
14 Baby Clams (smoked in oil) are hereinafter referred to as the "Covered Product". This Covered
15 Product contains lead.

16 19. Defendant has knowingly and intentionally exposed numerous consumers throughout
17 California to lead from the Covered Product without providing a Proposition 65 warning. The
18 company has at all times relevant hereto been aware that the Covered Product contains lead and that
19 persons ingesting the product are exposed to this chemical. Defendant has had knowledge for a
20 substantial period of time that the Covered Product contains lead and that consumers are exposed to
21 the chemical through ingestion. Subsequent to serving the Notice of Violation, Plaintiff provided
22 test results to Defendant showing high lead levels in the Covered Product.

23 20. Defendant has failed to provide users of the Covered Product with a clear and
24 reasonable warning that they are being exposed to a chemical known to the State of California to
25 cause cancer, birth defects or 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)

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

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

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

24. Defendant's continued violation of the law will irreparably harm CTWG and the public interest in whose behalf Plaintiff brings this action, for which there is no adequate remedy at law.

SECOND CAUSE OF ACTION

(Declaratory Relief)

25. CTWG refers to paragraphs 1-24, inclusive, and incorporates them herein by this reference.

26. 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 Plaintiff and Defendant concerning whether Crown Prince has exposed individuals to a chemical known to the State of California to cause cancer, birth defects or other reproductive harm; without providing clear and reasonable warning.

VI

PRAYER

WHEREFORE plaintiff prays for relief as follows:

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

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

5 3. On the Second Cause of Action, for a declaratory judgment pursuant to Code of Civil
6 Procedure section 1060 declaring that Defendant has exposed individuals to a chemical known to
7 the State of California to cause cancer, birth defects or other reproductive harm;

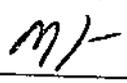
8 4. On all Causes of Action, for reasonable attorneys' fees pursuant to section 1021.5 of the
9 Code of Civil Procedure or the substantial benefit theory;

10 5. For costs of suit herein; and

11 6. For such other relief as the Court may deem just and proper.
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13

14 Dated: October 9, 2013

15
16 By



17
18 Michael Freund
19 Attorney for The Chemical Toxin Working Group
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EXHIBIT A

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

March 5, 2013

VIA CERTIFIED MAIL

Christopher A. Bruno
Crown Prince, Inc.
18581 Railroad Street
City of Industry, CA 91748

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 Crown Prince, Inc. for Violation of California Health & Safety Code Section 25249.5 et seq.

Dear Addressees:

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 exposures to lead in products ingested by consumers.

This letter constitutes notification that Crown Prince, Inc. 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 this product identified as exceeding allowable levels are:

Crown Prince Baby Clams (smoked in oil) – lead

Crown Prince, Inc. 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. Crown Prince, Inc. is in violation of Proposition 65 because the company failed to provide a warning to persons ingesting the noticed product that they are being exposed to lead. (22 C.C.R. section 12601.) While in the course of doing business, Crown Prince, Inc. 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, The Chemical Toxin Working Group 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 The Chemical Toxin Working Group from information now available to us. 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: David Steinman

Attachments:

Certificate of Merit

Certificate of Service

OEHHA Summary to Crown Prince, 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: March 5, 2013



Michael Freund
Attorney for The Chemical Toxin Working Group

CERTIFICATE OF SERVICE

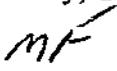
I am a citizen of the United States and a resident of the County of Alameda. I am over the age of eighteen years and not a party to the within entitled action. My business address is 1919 Addison Street, Suite 105, Berkeley, California 94704. On March 5, 2013 I served the within:

Notice of Violation Against Crown Prince, 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 March 5, 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
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Fresno, CA 93721
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- District Attorney, Kern County
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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
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- District Attorney, Madera County
209 West Yosemite Avenue
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Mariposa, CA 95338
- District Attorney, Mendocino County
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Napa, CA 94559
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Santa Ana, CA 92701
- District Attorney, Placer County
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Roseville, CA 95678
- District Attorney, Plumas County
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Riverside, CA 92501
- District Attorney, Sacramento County
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Sacramento, CA 95814
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San Luis Obispo, CA 93408
- District Attorney, San Mateo County
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Santa Barbara, CA 93101
- District Attorney, Santa Clara County
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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
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- District Attorney, Siskiyou County
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