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**FILED**  
**ALAMEDA COUNTY**

MAY - 1 2018

CLERK OF THE SUPERIOR COURT  
 By  DEPUTY


**Attorney for Plaintiff**

*The Chemical Toxin Working Group, Inc.*  
 ("CTWG")

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

UNLIMITED JURISDICTION

 18903049

THE CHEMICAL TOXIN WORKING GROUP,  
 INC., a California non-profit corporation,

Case No. \_\_\_\_\_

Plaintiff,

**COMPLAINT FOR CIVIL PENALTIES  
 AND INJUNCTIVE RELIEF**

v.

Health & Safety Code § 25249.5, *et seq.*

Island Pacific Supermarkets, Inc., a California  
 corporation; and DOES 1-25, inclusive,

Defendants.

**BY FAX**

COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

1 Plaintiff THE CHEMICAL TOXIN WORKING GROUP, INC. ("PLAINTIFF" or "CTWG")  
2 brings this action in the interests of the general public, and on information and belief, hereby alleges:

3 **INTRODUCTION**

4 1. This action seeks to remedy the continuing failure of Defendant ISLAND PACIFIC  
5 SUPERMARKETS, INC. ("DEFENDANT") to clearly and reasonably warn consumers in California  
6 they are being exposed to lead, a chemical known to the State of California to cause cancer and  
7 reproductive toxicity (developmental toxicity, male reproductive toxicity, and female reproductive  
8 toxicity) and cadmium, a chemical known to the State of California to cause cancer and reproductive  
9 toxicity (developmental toxicity and male reproductive toxicity). According to the Safe Drinking Water  
10 and Toxics Enforcement Act of 1986, Health and Safety Code, section 25249.5 *et seq.* (also known as  
11 and referred to hereafter as "Proposition 65"), persons in the course of doing business must provide  
12 persons with a "clear and reasonable warning" before exposing individuals to chemicals known to the  
13 state to cause cancer or reproductive harm. DEFENDANT manufactures, packages, distributes, markets,  
14 and/or sells in California a certain product containing lead and cadmium known as Flower Brand Whole  
15 Baby Clams and certain products containing lead known as Flower Brand Clams in Brine, Caravelle  
16 Brand Baby Clams, and Searam Brand Baby Clams ("SUBJECT PRODUCTS").

17 2. Lead and cadmium (the "LISTED CHEMICALS") are substances known to the state of  
18 California to cause cancer and reproductive toxicity.

19 3. The consumption of the SUBJECT PRODUCTS causes exposure to the LISTED  
20 CHEMICALS at levels requiring a "clear and reasonable warning" under Proposition 65. (Health & Saf.  
21 Code, § 25249.6.) DEFENDANT exposes consumers of the SUBJECT PRODUCTS to the LISTED  
22 CHEMICALS and has failed to provide the health hazard warnings required by Proposition 65.

23 4. DEFENDANT'S continued manufacturing, packaging, distribution, marketing, and/or  
24 sales of the SUBJECT PRODUCTS without the required health hazard warnings causes individuals to  
25 be involuntarily, unknowingly, and unwittingly exposed to levels of the LISTED CHEMICALS that  
26 violate Proposition 65.

**PARTIES**

5. PLAINTIFF is a non-profit public benefit corporation organized under California law. CTWG is dedicated to, among other causes, reducing the amount of chemical toxins in consumer products, the promotion of human health, environmental safety, and improvement of worker and consumer safety.

6. CTWG is a person within the meaning of Health and Safety Code, section 25249.11 and brings this enforcement action in the public interest pursuant to Health and Safety Code, section 25249.7, subdivision (d), which specifies a person may bring an action to enforce Proposition 65 in the public interest, provided certain notice requirements and that no other public prosecutor is diligently prosecuting an action for the same violation(s).

7. ISLAND PACIFIC SUPERMARKETS, INC. is now, and was at all times relevant herein, a corporation organized under the laws of California and doing business within the meaning of Health and Safety Code, section 25249.11, subdivision (b), at 20819 Currier Road, Unit 100, Walnut, California 91789.

8. DEFENDANT owns, administers, directs, controls, and/or operates facilities and/or agents, distributors, sellers, marketers, or other retail operations who place its products into the stream of commerce in California (including but not limited to Alameda County) under the brand name Flower Brand, Caravelle Brand, Searam Brand, and other brand names, which contain the LISTED CHEMICALS without first giving "clear and reasonable" warnings.

9. The true names and capacities of Defendants herein named as DOES 1 through 25, inclusive, are unknown to PLAINTIFF, who therefore sues said Defendants by such fictitious names. PLAINTIFF will seek leave of Court to amend this complaint to show their true names when the same have been ascertained. Each of these Defendants were in some way legally responsible for the acts, omission and violations alleged herein. Defendants, DOES 1 through 25 inclusive and the DEFENDANT, are collectively referred to herein as "DEFENDANTS."

10. DEFENDANTS were at all times relevant to the claims in this Complaint and continuing through the present, legally responsible for compliance with the provisions of Proposition 65. Whenever

1 an allegation regarding any act of any DEFENDANT is made herein, such allegation shall be deemed to  
2 meant that DEFENDANTS, or their agents, officers, directors, managers, supervisors, or employees, did  
3 or so authorized such acts while engaged in the affairs of DEFENDANTS' business operations and/or  
4 while acting within the course and scope of their employment or while conducting business for  
5 DEFENDANTS for a commercial purpose.

6 11. In this Complaint, when reference is made to any act of any DEFENDANT, such  
7 allegation shall mean that the owners, officers, directors, agents, employees, contractors, or  
8 representatives of DEFENDANTS acted or authorized such actions, and/or negligently failed and  
9 omitted to act or adequately and properly supervise, control, or direct its employees and agents while  
10 engaged in the management, direction, operation, or control of the affairs of the business organizations.  
11 Whenever reference is made to any act of any DEFENDANT, such allegation shall be deemed to mean  
12 the act of each DEFENDANT acting individually, jointly, and severally as defined by Civil Code,  
13 section 1430 *et seq.*

#### 14 **JURISDICTION AND VENUE**

15 12. This Court has jurisdiction over this action pursuant to California Constitution, Article  
16 VI, section 10, which grants the Superior Court "original jurisdiction in all causes except those given by  
17 statute to other trial courts." The statute under which this action is brought does not specify any other  
18 court with jurisdiction.

19 13. This Court has jurisdiction over DEFENDANTS because it is a business entity that does  
20 sufficient business, has sufficient minimum contacts in California, or otherwise intentionally avails itself  
21 of the California market, through the sale, marketing, and use of the SUBJECT PRODUCTS in  
22 California, to render the exercise of jurisdiction over it by the California courts consistent with  
23 traditional notions of fair play and substantial justice.

24 14. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil  
25 Procedure, sections 395 and 395.5, because this Court is a court of competent jurisdiction, because one  
26 or more instances of wrongful conduct occurred, and continue to occur, in Alameda County, and  
27 because the cause, or part thereof, arises in Alameda County because DEFENDANTS' violations

1 occurred (the SUBJECT PRODUCTS are marketed, offered for sale, sold, used, and/or consumed  
2 without clear and reasonable warnings) in this County.

### 3 STATUTORY BACKGROUND

4 15. The People of the State of California declared in Proposition 65 their right “[t]o be  
5 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive harm.”  
6 (Health & Saf. Code Div. 20, Ch. 6.6 Note [Section 1, subdivision (b) of Initiative Measure, Proposition  
7 65].) Proposition 65 is classically styled as a “right-to-know” law intended to inform consumers’ choices  
8 prior to exposure.

9 16. To effect this goal, Proposition 65 requires that individuals be provided with a “clear and  
10 reasonable warning” before being exposed to substances listed by the State of California as causing  
11 cancer or reproductive toxicity. (Health & Saf. Code, § 25249.6.) Health and Safety Code, section  
12 25249.6 states, in pertinent part, “[n]o person in the course of doing business shall knowingly and  
13 intentionally expose any individual to a chemical known to the state to cause cancer or reproductive  
14 toxicity without first giving clear and reasonable warning to such individual . . .”

15 17. An exposure to a chemical in a consumer product is one “which results from a person’s  
16 acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or  
17 any exposure that results from receiving a consumer service.” (Cal. Code Regs., tit. 27, § 25602, subd.  
18 (b).) California Code of Regulations, title 27, section 25603, subdivision (c) states that “a person in the  
19 course of doing business . . . shall provide a warning to any person to whom the product is sold or  
20 transferred unless the product is packaged or labeled with a clear and reasonable warning.”

21 18. Pursuant to California Code of Regulations, title 27, section 25603.1:

22 The warning may be provided by using one or more of the following  
23 methods singly or in combination:

24 (a) A warning that appears on a product's label or other labeling.

25 (b) Identification of the product at the retail outlet in a manner which  
26 provides a warning. Identification may be through shelf labeling, signs,  
27 menus, or a combination thereof.

28 (c) The warnings provided pursuant to subparagraphs (a) and (b) shall be

1 prominently placed upon a product's label or other labeling or displayed at  
2 the retail outlet with such conspicuousness, as compared with other words,  
3 statements, designs, or devices in the label, labeling or display as to render  
it likely to be read and understood by an ordinary individual under  
customary conditions of purchase or use.

4 (d) A system of signs, public advertising identifying the system and toll-  
5 free information services, or any other system that provides clear and  
6 reasonable warnings.

7 19. Proposition 65 provides that any "person who violates or threatens to violate" the statute  
8 may be enjoined in a court of competent jurisdiction. (Health & Saf. Code, § 25249.7). The phrase  
9 "threaten to violate" is defined to mean creating "a condition in which there is a substantial probability  
10 that a violation will occur." (*Id.*, § 25249.11, subd. (e).) Violators are liable for civil penalties of up to  
11 \$2,500 per day for each violation of the Act. (*Id.*, § 25249.7 subd. (b).)

#### 12 **FACTUAL BACKGROUND**

13 20. On February 27, 1987, the State of California officially listed lead as a chemical known  
14 to cause reproductive toxicity: developmental toxicity, male reproductive toxicity, and female  
15 reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead  
16 compounds as chemicals known to cause cancer.

17 21. The Maximum Allowable Dose Level ("MADL") for lead, reproductive toxicity is 0.5  
18 µg/day. The MADL is calculated based on a body weight of 58 kg for an adult or pregnant woman, 70  
19 kg for an adult male, 40 kg for an adolescent, 20 kg for a child, 10 kg for an infant, and 3.5 kg for a  
20 neonate. (Cal. Code Regs. tit. 27, § 25803, subd. (b).) The exposure estimates from the Flower Brand  
21 Whole Baby Clams, Flower Brand Baby Clams in Brine, Caravelle Brand Baby Clams, and Searam  
22 Brand Baby Clams exceed the lead MADL set by the California Office of Environmental Health Hazard  
23 Assessment. As a result, Flower Brand Whole Baby Clams, Flower Brand Baby Clams in Brine,  
24 Caravelle Brand Baby Clams, and Searam Brand Baby Clams need a clear a reasonable warning under  
25 Proposition 65.

26 22. On October 1, 1987, the State of California officially listed cadmium as a chemical  
27 known to cause cancer. On May 1, 1997, the State of California officially listed Cadmium as causing  
28

1 reproductive toxicity: developmental toxicity and male reproductive toxicity

2 23. The MADL - oral for cadmium, reproductive toxicity is 4.1 µg/day. The MADL is  
3 calculated based on a body weight of 58 kg for an adult or pregnant woman, 70 kg for an adult male, 40  
4 kg for an adolescent, 20 kg for a child, 10 kg for an infant, and 3.5 kg for a neonate. (Cal. Code Regs. tit.  
5 27, § 25803, subd. (b).) The exposure estimate from the Flower Brand Whole Baby Clams exceeds the  
6 MADL set by the California Office of Environmental Health Hazard Assessment. As a result, Flower  
7 Brand Whole Baby Clams needs a clear a reasonable warning under Proposition 65.

8 24. To test DEFENDANTS' SUBJECT PRODUCTS for lead and cadmium, PLAINTIFF  
9 hired a well-respected and accredited testing laboratory that used the testing protocol used and approved  
10 by the California Attorney General. The results of testing undertaken by PLAINTIFF of  
11 DEFENDANTS' SUBJECT PRODUCTS show the SUBJECT PRODUCTS tested were in violation of  
12 the 0.5 µg/day "safe harbor" daily dose limit for lead and the 4.1 µg/day "safe harbor" daily dose limit  
13 for cadmium set forth in Proposition 65's regulations. As a result, the SUBJECT PROJECTS need clear  
14 a reasonable warning under Proposition 65.

15 25. The consumer exposures that are the subject of this notice result from the recommended  
16 use of the product, ingestion. Consumers and other individuals, including women of childbearing age  
17 and developmental males, are orally exposed to the LISTED CHEMICALS by eating the product.

18 26. At all times relevant to this action, DEFENDANTS are a person<sup>1</sup> in the course of doing  
19 business<sup>2</sup> in California.

20 27. At all times relevant to this action, DEFENDANTS, therefore, have knowingly and  
21 intentionally exposed the users/consumers of the SUBJECT PRODUCTS to the LISTED CHEMICALS  
22 without first giving a clear and reasonable warning to such individuals.

23 28. Flower Brand Whole Baby Clams have allegedly been sold by DEFENDANTS to  
24 consumers in the State of California since at least January 5, 2017. Flower Brand Baby Clams in Brine,

25 \_\_\_\_\_  
26 <sup>1</sup> "PERSON" includes an "individual, trust, firm, joint stock company, corporation, company, partnership, limited  
27 liability company, and association." (Health and Safety Code, § 25249.11, subd. (a).)

28 <sup>2</sup> "PERSON IN THE COURSE OF DOING BUSINESS" includes a PERSON employing more than ten  
employees. (See *id.* § 25249.11, subd. (b).)

1 Caravelle Brand Baby Clams, and Searam Brand Baby Clams have allegedly been sold by  
2 DEFENDANTS to consumers in the State of California since at least February 12, 2017. The SUBJECT  
3 PRODUCTS continue to be distributed and sold in California without the requisite warning information.

4 29. As a proximate result of acts by DEFENDANTS, as persons in the course of doing  
5 business within the meaning of Health and Safety Code, section 25249.11, individuals throughout the  
6 State of California, including in the County of Alameda, have been exposed to the LISTED  
7 CHEMICALS without a clear and reasonable warning on the SUBJECT PRODUCTS. The individuals  
8 subject to the violative exposures include normal and foreseeable users/consumers of the SUBJECT  
9 PRODUCTS, as well as all other persons exposed to the SUBJECT PRODUCTS.

10 30. On January 5, 2018, CTWG served DEFENDANTS and the appropriate public  
11 enforcement agencies with a document entitled "Notice of Violation of California Health & Safety  
12 Code, Section 25249.5 *et seq.* (Proposition 65)" that provided DEFENDANTS and the public  
13 enforcement agencies with notice that DEFENDANTS were in violation of Proposition 65 for failing to  
14 warn purchasers and individuals using the SUBJECT PRODUCT, Flower Brand Whole Baby Clams,  
15 that the use of the SUBJECT PRODUCTS exposes them to lead and cadmium, chemicals known in the  
16 State of the California to cause cancer and reproductive toxicity ("Prop. 65 Notice"). A true and correct  
17 copy of the 60-Day Notice ("NOTICE I") is attached hereto as **Exhibit A**, is hereby incorporated by  
18 reference, and is available on the Attorney General's website located at <https://oag.ca.gov/prop65>.

19 31. NOTICE I was issued pursuant to, and in compliance with, the requirements of Health  
20 and Safety Code, section 25249.7, subdivision (d) and the statute's implementing regulations regarding  
21 the notice of the violations to be given to certain public enforcement agencies and to the violator. The  
22 NOTICE included, *inter alia*, the following information: the name, address, and telephone number of the  
23 noticing individual; the name of the alleged violator; the statute violated; the approximate time period  
24 during which violations occurred; and descriptions of the violations including the chemicals involved,  
25 the routes of toxic exposure, and the specific product or type of product causing the violations.

26 32. DEFENDANTS were also provided copies of the document entitled "The Safe Drinking  
27 Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary," which is also known as  
28



Appendix A to California Code of Regulations, title 27, section 25903, via Certified Mail.

33. The California Attorney General was provided a copy of NOTICE I and a Certificate of Merit by the attorney for the noticing party, stating that there is a reasonable and meritorious case for this action, and attaching factual information sufficient to establish a basis for the certificate, including the identity of the persons consulted with and relied on by the certifier, and the facts, studies, or other data reviewed by those persons, pursuant to Health and Safety Code, section 25249.7, subdivision (h)(2) via online submission.

34. After expiration of the sixty (60) day notice period, the appropriate public enforcement agencies have failed to commence and diligently prosecute a cause of action under Health and Safety Code, section 25249.5, *et seq.* against DEFENDANTS based on the allegations herein.

35. On February 12, 2018, CTWG served DEFENDANTS and the appropriate public enforcement agencies with a document entitled "Notice of Violation of California Health & Safety Code, Section 25249.5 *et seq.* (Proposition 65)" that provided DEFENDANTS and the public enforcement agencies with notice that DEFENDANTS were in violation of Proposition 65 for failing to warn purchasers and individuals using the SUBJECT PRODUCTS, Flower Brand Baby Clams in Brine, Caravelle Brand Baby Clams, and Searam Brand Baby Clams, that the use of the SUBJECT PRODUCTS exposes them to lead, a chemical known in the State of the California to cause cancer and reproductive toxicity ("Prop. 65 Notice"). A true and correct copy of the 60-Day Notice ("NOTICE II") is attached hereto as **Exhibit B**, is hereby incorporated by reference, and is available on the Attorney General's website located at <https://oag.ca.gov/prop65>.

36. NOTICE II was issued pursuant to, and in compliance with, the requirements of Health and Safety Code, section 25249.7, subdivision (d) and the statute's implementing regulations regarding the notice of the violations to be given to certain public enforcement agencies and to the violator. The NOTICE included, *inter alia*, the following information: the name, address, and telephone number of the noticing individual; the name of the alleged violator; the statute violated; the approximate time period during which violations occurred; and descriptions of the violations including the chemicals involved, the routes of toxic exposure, and the specific product or type of product causing the violations.

1           37. DEFENDANTS were also provided copies of the document entitled "The Safe Drinking  
2 Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary," which is also known as  
3 Appendix A to California Code of Regulations, title 27, section 25903, via Certified Mail.

4           38. The California Attorney General was provided a copy of NOTICE II and a Certificate of  
5 Merit by the attorney for the noticing party, stating that there is a reasonable and meritorious case for  
6 this action, and attaching factual information sufficient to establish a basis for the certificate, including  
7 the identity of the persons consulted with and relied on by the certifier, and the facts, studies, or other  
8 data reviewed by those persons, pursuant to Health and Safety Code, section 25249.7, subdivision (h)(2)  
9 via online submission.

10           39. Based on information and belief, DEFENDANTS have sold the SUBJECT PRODUCTS  
11 without giving clear and reasonable warnings that lead and cadmium can cause cancer and reproductive  
12 toxicity. DEFENDANTS have sold dozens, if not hundreds or thousands, of units of the SUBJECT  
13 PRODUCTS to consumers in the State of California during each and every month from December 18,  
14 2016 through the present, amounting to numerous and significant violative consumer exposures to the  
15 SUBJECT PRODUCTS sold in that period.

16           **Basis for Injunctive Relief for Violations of Health and Safety Code, section 25249.5, et seq.**  
17 **concerning the SUBJECT PRODUCTS described in the January 5, 2018 and February 12, 2018,**

18           **Prop. 65 Notices of Violation Against DEFENDANTS**

19           40. PLAINTIFF re-alleges and incorporates by reference Paragraphs 1 through 39, inclusive,  
20 as if specifically set forth herein.

21           41. By committing the acts alleged in this Complaint, DEFENDANTS at all times relevant to  
22 this action, and continuing through the present, have violated, or threatened to violate, Health and Safety  
23 Code, section 25249.6 by, in the course of doing business, knowingly and intentionally exposing  
24 individuals in California to chemicals known to the State of California to cause cancer and reproductive  
25 toxicity without first giving "clear and reasonable" warnings to such persons who use or consume the  
26 SUBJECT PRODUCTS containing the LISTED CHEMICALS, pursuant to Health and Safety Code,  
27 sections 25249.6 and 25249.11, subdivision (f).

42. By committing the acts alleged in this Complaint, DEFENDANTS have caused or threatened to cause irreparable harm for which there is no plain, speedy, or adequate remedy at law. In the absence of equitable relief, DEFENDANTS will continue to create a substantial risk of irreparable injury by continuing to cause consumers to be involuntarily and unwittingly exposed to lead and cadmium through the foreseeable and/or intended use and/or consumption of the SUBJECT PRODUCTS.

43. By the above-described acts, DEFENDANTS have violated, or threatened to violate, Health and Safety Code, section 25249.6 and is therefore subject to preliminary and permanent injunctions ordering DEFENDANTS to stop violating Proposition 65, or threatening to violate Proposition 65, to provide clear and reasonable warnings to all present and future customers, and possibly be required to provide warnings to DEFENDANTS' past customers who purchased or used the SUBJECT PRODUCTS without receiving a clear and reasonable warning.

44. Health and Safety Code, section 25249.7, subdivision (a) specifically authorizes an action for injunctive relief under Proposition 65.

45. Continuing commission by DEFENDANTS of the knowing and intentional acts alleged above will irreparably harm the citizens of the State of California, for which harm they have no plain, speedy, or adequate remedy at law.

46. In the absence of preliminary and then permanent injunctive relief, DEFENDANTS will continue to create a substantial risk of irreparable injury by continuing to cause users and/or consumers to be involuntarily, unknowingly and unwittingly exposed to the LISTED CHEMICALS through the use/consumption of the SUBJECT PRODUCTS.

**FIRST CAUSE OF ACTION**

**(Civil Penalties for Violations of Health and Safety Code, section 25249.5, *et seq.* Concerning the  
SUBJECT PRODUCTS Described in the January 5, 2018 and February 12, 2018, Prop. 65 Notices  
of Violation)**

47. PLAINTIFF re-alleges and incorporates by reference Paragraphs 1 through 46, inclusive, as if specifically set forth herein.

48. By committing the acts alleged in this Complaint, DEFENDANTS at all times relevant to this action, and continuing through the present, have violated, or threatened to violate, Health and Safety Code, section 25249.6 by, in the course of doing business, by knowingly and intentionally exposing individuals/consumers in California to chemicals known to the State of California to cause cancer and reproductive toxicity without first giving clear and reasonable warnings to such persons who foreseeably use and/or consume the SUBJECT PRODUCTS containing the LISTED CHEMICALS, pursuant to Health and Safety Code, sections 25249.6 and 25249.11, subdivision (f).

49. For each knowing and intentional unwarned exposure discovered within limitations period, DEFENDANTS are liable, pursuant to Health and Safety Code, section 25249.7, subdivision (b), for a civil penalty of up to \$2,500 per day per violation for each exposure to the LISTED CHEMICALS from the SUBJECT PRODUCTS, according to proof.

## **PRAYER FOR RELIEF**

**Wherefore, PLAINTIFF prays for the following relief:**

A. A preliminary and permanent injunction, pursuant to Health and Safety Code, section 25249.7, subdivision (b), enjoining DEFENDANTS, their agents, employees, assigns, and all persons acting in concert or participating with DEFENDANTS, from manufacturing, distributing, marketing, processing, selling, or offering to sell the SUBJECT PRODUCTS to consumers in California, thereby violating, or threatening to violate, Health and Safety Code, section 25249.6, without first providing a “clear and reasonable warning” regarding the LISTED CHEMICALS within the meaning of Proposition 65;

B. An injunctive order, pursuant to Health and Safety Code, section 25249.7, subdivision (b) and California Code of Regulations, title 27, sections 25603 and 25603.1, compelling DEFENDANTS to provide “clear and reasonable” warnings on the labels of the SUBJECT PRODUCTS. The warnings should indicate that the SUBJECT PRODUCTS will expose the user or consumer to chemicals known to the State of California to cause cancer and reproductive toxicity;

C. An assessment of civil penalties pursuant to Health and Safety Code, section 25249.7, subdivision (b), against DEFENDANTS in the amount on \$2,500 per day for each violation of

1 Proposition 65, according to proof;

2 D. An award to PLAINTIFF of its reasonable attorney's fees and cost of suit pursuant to  
3 California Code of Civil Procedure, sections 1021.5 and 1032 *et seq.*, according to proof; and

4 E. Such other and further relief the Court deems just and proper.  
5

6 Dated: April 18, 2018

Respectfully submitted,

7 AQUA TERRA AERIS LAW GROUP

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10 Matthew C. Maclear

Amanda Prasuhn

11 Attorneys for Plaintiff Center for Advanced  
12 Public Awareness  
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# EXHIBIT A



Matthew M. Maclear  
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415.568.5200

January 5, 2018

**NOTICE OF VIOLATION OF  
CALIFORNIA HEALTH & SAFETY CODE, SECTION 25249.5 ET SEQ.  
(PROPOSITION 65)**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

ATA Law Group represents The Chemical Toxin Working Group, Inc., doing business as HealthyLivinG Foundation ("HLF"), at 1801 Chart Trail, Topanga, CA 90290. HLF is a California non-profit corporation dedicated to, among other causes, organization dedicated to reducing the amount of chemical toxins in consumer products, the promotion of human health, environmental safety, and improvement of worker and consumer safety.

Through this Notice of Violation ("Notice"), HLF seeks to reduce and/or eliminate exposures to lead and cadmium ingested by consumers from baby clams produced, distributed, and/or sold by **Island Pacific Supermarkets, Inc.** (the alleged "Violator").

This Notice constitutes written notification that Island Pacific Supermarkets, Inc. has violated the warning requirements of Proposition 65, which is codified at California Health & Safety Code, section 25249.5 *et seq.*, with respect to the Subject Product identified below. These violations have occurred and continue to occur because the alleged Violator failed to provide required clear and reasonable warnings with this product. Section 25249.6 of the statute provides that "[n]o 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 providing a clear and reasonable warning to such individual." Without proper warnings regarding the toxic effects of exposures to this listed chemical that results from contact with this product, California citizens lack the information necessary to make an informed decision on whether and/or how to eliminate (or reduce) their risk of exposure to the listed chemical from the reasonably foreseeable use of the product.

Proposition 65 requires that notice and intent to sue be provided to a violator 60 days before a suit is filed in connection therewith. With this Notice, HLF gives written notice of the alleged violation to the Noticed Parties and the appropriate governmental authorities. This Notice covers all violations of Proposition 65 that are currently known to the noticing party from information now available as specifically related to the violating product sold through Noticed Parties, and other retailers and/or distributors. HLF is continuing its investigation that may reveal further violations. Pursuant to Health and Safety Code, section 25249.7, subdivision (d), HLF intends to file a private enforcement action in the public interest sixty (60) days after effective



Notice of Violation of California Health & Safety Code § 25249.5 *et seq.*  
January 5, 2018

service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**Certificate of Merit and General Information about Proposition 65.** Pursuant to California Code of Regulations, title 11, section 3100, a certificate of merit is attached hereto. Pursuant to California Code of Regulations, title 27, section 25903, subdivision (b), a copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with this letter served to the alleged Violator identified below.

Proposition 65 requires that a “clear and reasonable” warning be provided prior to exposure to certain listed chemicals. The Noticed Parties are in violation of Proposition 65 because the Noticed Parties have failed to provide a warning to consumers that they are being exposed to lead and cadmium. While in the course of doing business, the Violator “knowingly and intentionally” expose consumers to lead and cadmium without first providing a “clear and reasonable” warning. (See Health & Saf. Code, § 25249.6.) The method of warning should be a warning that appears on the product's label. (See Cal. Code Regs. tit. 27, § 25603.1, subd. (a).) The Violator has not provided any Proposition 65 warnings on the Subject Product's label or any other appropriate warnings that persons handling, ingesting, and/or otherwise using the specified product are being exposed to lead and cadmium.

**Alleged Violator.** The names of the companies covered by this notice that violated Proposition 65 (hereinafter the “Violator”) are:

- **Island Pacific Supermarkets, Inc.**  
20819 Currier Road, Unit 100  
Walnut, CA 91789

**Consumer Products and Listed Chemicals.** The following is the product subject to this Notice of Violation (the “Subject Product”) and the chemicals in the specified product identified as exceeding allowable levels under Proposition 65:

- **Flower Brand Whole Baby Clams 20 oz. – Lead and Cadmium**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause reproductive toxicity: developmental toxicity, male reproductive toxicity, and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

On October 1, 1987, the State of California officially listed cadmium as a chemical known to cause cancer. On May 1, 1997, the State of California officially listed Cadmium as causing reproductive toxicity: developmental toxicity and male reproductive toxicity.





Notice of Violation of California Health & Safety Code § 25249.5 *et seq.*  
January 5, 2018

In summary, lead and cadmium were listed under Proposition 65 as known to the State to cause cancer and reproductive toxicity:

Chemical	CAS No.	Toxicological Endpoint	Listing Mechanism
Lead <sup>1</sup>	7439-92-1	Cancer; Reproductive Toxicity	Authoritative Body-US EPA (AB-US EPA); Formally Required to be Labeled (FR)
Cadmium <sup>2</sup>	7440-43-9	Cancer; Reproductive Toxicity	State's Qualified Experts (SQE)

**Violations.** The alleged Violator knowingly and intentionally exposed and continue to knowingly and intentionally expose consumers within the State of California to lead at levels that, upon reasonable use of the product, exceed the No Significant Risk Level and/or the Maximum Allowable Dose Level without providing clear and reasonable warning of this exposure. In particular, the product does not warn that it contains chemicals known to the State of California to cause reproductive toxicity or developmental toxicity.

The Maximum Allowable Dose Level ("MADL") for lead, reproductive toxicity is 0.5 µg/day. The MADL is calculated based on a body weight of 58 kg for an adult or pregnant woman, 70 kg for an adult male, 40 kg for an adolescent, 20 kg for a child, 10 kg for an infant, and 3.5 kg for a neonate. (Cal. Code Regs. tit. 27, § 25803, subd. (b).) The exposure estimate from the Flower Brand Whole Baby Clams significantly exceeds the MADL set by the California Office of Environmental Health Hazard Assessment. As a result, Flower Brand Whole Baby Clams needs a clear a reasonable warning under Proposition 65.

The MADL - oral for cadmium, reproductive toxicity is 4.1 µg/day. The exposure estimate from the Flower Brand Whole Baby Clams exceeds the MADL set by the California Office of Environmental Health Hazard Assessment. As a result, Flower Brand Whole Baby Clams needs a clear a reasonable warning under Proposition 65.

**Route of Exposure.** The consumer exposures that are the subject of this notice result from the recommended use of the product, ingestion. Consumers and other individuals, including women of childbearing age, are orally exposed to the listed chemicals by eating the product.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least January 5, 2017, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are

<sup>1</sup> <https://oehha.ca.gov/proposition-65/chemicals/lead-and-lead-compounds>.

<sup>2</sup> <https://oehha.ca.gov/proposition-65/chemicals/cadmium>.



Notice of Violation of California Health & Safety Code § 25249.5 *et seq.*  
January 5, 2018

provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to the listed chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, HLF is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) recall products already sold or undertake best efforts to ensure that the requisite health hazard warnings are provided to those who have received such products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 for products sold in the future or reformulate such products to eliminate further lead and cadmium exposures. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time consuming litigation.

HLF has retained ATA Law Group as legal counsel in connection with this matter.  
**Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated herein.**

Dated: January 5, 2018

Very truly yours,

---

Matthew C. Maclear  
AQUA TERRA AERIS LAW GROUP  
Attorney for The Chemical Toxin Working  
Group, Inc.

**Attachments:**

Certificate of Merit  
Certificate of Service  
OEHHA Summary (to Violator)  
Additional Supporting Information for Certificate of Merit (to AG only)



Notice of Violation of California Health & Safety Code § 25249.5 *et seq.*  
January 5, 2018

### CERTIFICATE OF MERIT

**Re: The Chemical Toxin Working Group, Inc.'s Notice of Proposition 65 Violations by Island Pacific Supermarkets, Inc.**

I, Matthew Maclear, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the party identified in the notice violated California Health & Safety Code, section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
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 exposure to the listed chemical that is the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, 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 that 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. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code, section 25249.7, subdivision (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 5, 2018

---

Matthew C. Maclear  
AQUA TERRA AERIS LAW GROUP  
Attorney for The Chemical Toxin Working Group,  
Inc.



Notice of Violation of California Health & Safety Code § 25249.5 *et seq.*  
January 5, 2018

**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 828 San Pablo Avenue, Suite 115B, Albany, CA 94706. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Berkeley, California.

On January 5, 2018, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Nino Jefferson Miave Lim or  
Current President or CEO  
Island Pacific Supermarkets, Inc.  
20819 Currier Road, Unit 100  
Walnut, CA 91789

Nino Jefferson Miave Lim or Current Agent for  
Service of Process  
Island Pacific Supermarkets, Inc.  
20819 Currier Road, Unit 100  
Walnut, CA 91789

On January 5, 2018, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice>:

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Oakland, CA 94612-0550

On January 5, 2018, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to the party listed below:

Stacey Grassini, Deputy District Attorney  
District Attorney, Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
[sgrassini@contracostada.org](mailto:sgrassini@contracostada.org)

Gary Lieberstein, District Attorney  
District Attorney, Napa County  
931 Parkway Mall  
Napa, CA 94559  
[CEPD@countyofnapa.org](mailto:CEPD@countyofnapa.org)



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January 5, 2018

Birgit Fladager, District Attorney  
District Attorney, Stanislaus County  
832 12th Street, Suite 300  
Modesto, CA 95354  
[Prop65@standa.org](mailto:Prop65@standa.org)

Paul E. Zellerbach  
District Attorney, Riverside County  
3072 Orange Street  
Riverside, CA 92501  
[Prop65@rivcoda.org](mailto:Prop65@rivcoda.org)

Dije Ndreu, Deputy District Attorney  
District Attorney, Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
[Prop65DA@co.monterey.ca.us](mailto:Prop65DA@co.monterey.ca.us)

Philip J. Cline  
District Attorney, Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
[Prop65@co.tulare.ca.us](mailto:Prop65@co.tulare.ca.us)

Yen Dang, Supervising Deputy District Attorney  
District Attorney, Santa Clara County  
70 W Hedding St  
San Jose, CA 95110  
[EPU@da.sccgov.org](mailto:EPU@da.sccgov.org)

Gregory D. Totten  
District Attorney, Ventura County  
800 S Victoria Ave  
Ventura, CA 93009  
[daspecialops@ventura.org](mailto:daspecialops@ventura.org)

Stephan R. Passalacqua, District Attorney  
District Attorney, Sonoma County  
600 Administration Dr  
Sonoma, CA 95403  
[jbarnes@sonoma-county.org](mailto:jbarnes@sonoma-county.org)

Michelle Latimer, Program Coordinator  
District Attorney, Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
[mlatimer@co.lassen.ca.us](mailto:mlatimer@co.lassen.ca.us)

Anne Marie Schubert, District Attorney  
District Attorney, Sacramento County  
901 G Street  
Sacramento, CA 95814  
[Prop65@sacda.org](mailto:Prop65@sacda.org)

Gregory Alker, Assistant District Attorney  
District Attorney, San Francisco County  
732 Brannan Street  
San Francisco, CA 94103  
[Gregory.alker@sfgov.org](mailto:Gregory.alker@sfgov.org)

Tori Verber Salazar, District Attorney  
District Attorney, San Joaquin County  
222 E. Weber Avenue, Rm 202  
Stockton, CA 95202  
[DAConsumer.Environmental@sjcda.org](mailto:DAConsumer.Environmental@sjcda.org)

Eric J. Dobroth, Deputy District Attorney  
District Attorney, San Luis Obispo County  
County Government Center Annex, 4th Floor  
San Luis Obispo, CA 93408  
[edobroth@co.slo.ca.us](mailto:edobroth@co.slo.ca.us)

Jeff W. Reisig, District Attorney  
District Attorney, Yolo County  
301 Second Street  
Woodland, CA 95695  
[cfepd@volocounty.org](mailto:cfepd@volocounty.org)

Jeffrey S. Rosell, District Attorney  
District Attorney, Santa Cruz County  
701 Ocean Street  
Santa Cruz, CA 95060  
[Prop65DA@santacruzcounty.us](mailto:Prop65DA@santacruzcounty.us)



Notice of Violation of California Health & Safety Code § 25249.5 *et seq.*  
January 5, 2018

On January 5, 2018, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE § 25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by U.S. First Class Mail.

Executed on January 5, 2018 in Berkeley, California.

Amanda M. Prasuhn

**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, Lake County 255 N. Forbes Street Lakeport, CA 95453
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, Shasta County 1355 West Street Redding, CA 96001
District Attorney, Amador County 708 Court Street Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, Sierra County PO Box 457 Downieville, CA 95936
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097
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, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	Sacramento City Attorney's Office 915 I Street, 4 <sup>th</sup> Floor Sacramento, CA 95814
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991



Notice of Violation of California Health & Safety Code § 25249.5 *et seq.*  
January 5, 2018

District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Humboldt County 825 5th Street 4th Floor Eureka, CA 95501	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Inyo County P.O. Drawer D Independence, CA 93526	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, San Bernardino County 303 West 3rd Street, 6th Floor San Bernardino, CA 92415-0502	San Francisco, City Attorney City Hall, 234 1 Dr. Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	

## APPENDIX A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

#### THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

**The "Proposition 65 List."** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to

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<sup>1</sup> All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.



female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

***Clear and reasonable warnings.*** A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

***Prohibition from discharges into drinking water.*** A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

#### ***DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?***

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

***Grace Period.*** Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

***Governmental agencies and public water utilities.*** All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

***Businesses with nine or fewer employees.*** Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

**Exposures that pose no significant risk of cancer.** For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific “No Significant Risk Levels” (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

**Exposures that will produce no observable reproductive effect at 1,000 times the level in question.** For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level” divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

**Exposures to Naturally Occurring Chemicals in Food.** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

**Discharges that do not result in a “significant amount” of the listed chemical entering any source of drinking water.** The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” level for chemicals that cause cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

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<sup>2</sup> See Section 25501(a)(4).

## ***HOW IS PROPOSITION 65 ENFORCED?***

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at:  
<http://oehha.ca.gov/prop65/law/p65law72003.html>.

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...*

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at [P65Public.Comments@oehha.ca.gov](mailto:P65Public.Comments@oehha.ca.gov).

Revised: May 2017

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

# EXHIBIT B



Matthew M. Maclear  
mcm@atalawgroup.com  
415.568.5200

February 12, 2018

**NOTICE OF VIOLATION OF  
CALIFORNIA HEALTH & SAFETY CODE, SECTION 25249.5 *ET SEQ.*  
(PROPOSITION 65)**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

ATA Law Group represents The Chemical Toxin Working Group, Inc. ("CTWG") at 1801 Chart Trail, Topanga, CA 90290. CTWG is a California non-profit corporation dedicated to, among other causes, reducing the amount of chemical toxins in consumer products, the promotion of human health, environmental safety, and improvement of worker and consumer safety.

Through this Notice of Violation ("Notice"), CTWG seeks to reduce and/or eliminate exposures to lead ingested by consumers from baby clams produced, distributed, and/or sold by **Island Pacific Supermarkets, Inc.** (the "Alleged Violator").

This Notice constitutes written notification that Island Pacific Supermarkets, Inc. has violated the warning requirements of Proposition 65, which is codified at California Health & Safety Code, section 25249.5 *et seq.*, with respect to the Subject Products identified below. These violations have occurred and continue to occur because the Alleged Violator failed to provide required clear and reasonable warnings with the Subject Products. Section 25249.6 of the statute provides that "[n]o 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 providing a clear and reasonable warning to such individual." Without proper warnings regarding the toxic chemical contained in the Subject Products and the effect(s) of exposures to the listed chemical that results from consumption of the Subject Products, California citizens lack the information necessary to make an informed decision on whether and/or how to eliminate (or reduce) their risk of exposure to the listed chemical from the reasonably foreseeable use/consumption of the Subject Products.

Proposition 65 requires that notice of violation and intent to sue be provided to a violator 60 days before a suit is filed in connection therewith. With this Notice, CTWG gives written notice of the alleged violations to the Alleged Violator and the appropriate governmental authorities. This Notice covers additional<sup>1</sup> violations of Proposition 65 that are currently known to the noticing party from information now available as specifically related to the violating

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<sup>1</sup> On January 5, 2018, CTWG served a Notice of Violation to Island Pacific Supermarkets, Inc. regarding Flower Brand Whole Baby Clams – Lead and Cadmium.



Notice of Violation of California Health & Safety Code § 25249.5 *et seq.*  
February 12, 2018

Subject Product sold by and/or through the Alleged Violator, and other retailers and/or distributors. CTWG is continuing its investigation that may reveal further violations. Pursuant to Health and Safety Code, section 25249.7, subdivision (d), CTWG intends to file a private enforcement action in the public interest sixty (60) days after effective service of this Notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**Certificate of Merit and General Information about Proposition 65.** Pursuant to California Code of Regulations, title 11, section 3100, a certificate of merit is attached hereto. Pursuant to California Code of Regulations, title 27, section 25903, subdivision (b), a copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with this letter served to the Alleged Violator identified below.

Proposition 65 requires that a “clear and reasonable” warning be provided prior to exposure to certain listed chemicals. The Alleged Violator is in violation of Proposition 65 because it failed to provide a clear and reasonable warning to consumers that use/consumption of the Subject Products would expose consumers to lead in excess of regulatory limits. While in the course of doing business, the Alleged Violator “knowingly and intentionally” exposed consumers to lead without first providing a “clear and reasonable” warning. (See Health & Saf. Code, § 25249.6.) CTWG prefers a warning that appears on the product’s label. (See Cal. Code Regs. tit. 27, § 25603.1, subd. (a).) The Alleged Violator has not provided any Proposition 65 warnings on the Subject Products’ labels or any other appropriate warnings that persons handling, ingesting, using and/or otherwise consuming the Subject Products would be exposed to lead.

**Alleged Violator.** The name of the company covered by this Notice that violated Proposition 65 is:

- **Island Pacific Supermarkets, Inc.**  
20819 Currier Road, Unit 100  
Walnut, CA 91789

**Consumer Products and Listed Chemicals.** The following are the products subject to this Notice of Violation (the “Subject Product” or “Subject Products”) and the chemicals in the specified products identified as exceeding allowable levels under Proposition 65:

- **Flower Brand Baby Clams in Brine – Lead**
- **Caravelle Brand Baby Clams – Lead**
- **Searam Brand Baby Clams – Lead**

On February 27, 1987, the State of California officially listed lead as a chemical known



Notice of Violation of California Health & Safety Code § 25249.5 *et seq.*  
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to cause reproductive toxicity: developmental toxicity, male reproductive toxicity, and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer. In summary, lead was listed under Proposition 65 as known to the State to cause cancer and reproductive toxicity:

Chemical	CAS No.	Toxicological Endpoint	Listing Mechanism
Lead <sup>2</sup>	7439-92-1	Cancer; Reproductive Toxicity	Authoritative Body-US EPA (AB-US EPA); Formally Required to be Labeled (FR)

**Violations.** The Alleged Violator knowingly and intentionally exposed and continues to knowingly and intentionally expose consumers within the State of California to lead at levels that, upon reasonable use of the Subject Products, exceed the No Significant Risk Level and/or the Maximum Allowable Dose Level without providing clear and reasonable warning of this exposure. In particular, the Subject Products do not warn that it contains chemicals known to the State of California to cause reproductive toxicity or developmental toxicity.

The Maximum Allowable Dose Level ("MADL") for lead, reproductive toxicity is 0.5 µg/day. The MADL is calculated based on a body weight of 58 kg for an adult or pregnant woman, 70 kg for an adult male, 40 kg for an adolescent, 20 kg for a child, 10 kg for an infant, and 3.5 kg for a neonate. (Cal. Code Regs. tit. 27, § 25803, subd. (b).) The exposure estimate from the Flower Brand Baby Clams in Brine, Caravelle Brand Baby Clams, and Searam Baby Clams significantly exceed the MADL set by the California Office of Environmental Health Hazard Assessment. As a result, Flower Brand Baby Clams in Brine, Caravelle Brand Baby Clams, and Searam Baby Clams need clear and reasonable warnings under Proposition 65.

**Route of Exposure.** The consumer exposures that are the subject of this Notice result from the recommended use of the Subject Products, ingestion. Consumers and other individuals, including women of childbearing age, are orally exposed to the listed chemicals by eating the Subject Products.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least February 12, 2017, as well as every day since the Subject Products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to Subject Product purchasers, consumers, and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the Subject Products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the Subject Products' labels. The Alleged Violator violated Proposition 65 because it failed to provide

<sup>2</sup> <https://oehha.ca.gov/proposition-65/chemicals/lead-and-lead-compounds>.





Notice of Violation of California Health & Safety Code § 25249.5 *et seq.*  
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persons handling and/or using the Subject Products with appropriate warnings that they are being exposed to the listed chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, CTWG is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Alleged Violator to: (1) recall products already sold or undertake best efforts to ensure that the requisite health hazard warnings are provided to those who have received such products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 for products sold in the future or reformulate such products to eliminate further lead exposures. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time consuming litigation.

CTWG has retained ATA Law Group as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated herein.**

Dated: February 12, 2018

Very truly yours,

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Matthew C. Maclear  
AQUA TERRA AERIS LAW GROUP  
Attorney for The Chemical Toxin Working  
Group, Inc.

**Attachments:**

Certificate of Merit  
Certificate of Service  
OEHHA Summary (to Island Pacific Supermarkets, Inc.)  
Additional Supporting Information for Certificate of Merit (to AG only)



Notice of Violation of California Health & Safety Code § 25249.5 *et seq.*  
February 12, 2018

**CERTIFICATE OF MERIT**

**Re: The Chemical Toxin Working Group, Inc.'s Notice of Proposition 65 Violations by Island Pacific Supermarkets, Inc.**

I, Matthew Maclear, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the party identified in the notice violated California Health & Safety Code, section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
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 exposure to the listed chemical that is the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, 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 that 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. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code, section 25249.7, subdivision (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 12, 2018

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Matthew C. Maclear  
AQUA TERRA AERIS LAW GROUP  
Attorney for The Chemical Toxin Working Group,  
Inc.



Notice of Violation of California Health & Safety Code § 25249.5 *et seq.*  
February 12, 2018

**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 828 San Pablo Avenue, Suite 115B, Albany, CA 94706. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Berkeley, California.

On February 12, 2018, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Nino Jefferson Miave Lim or  
Current President or CEO  
Island Pacific Supermarkets, Inc.  
20819 Currier Road, Unit 100  
Walnut, CA 91789

Nino Jefferson Miave Lim or Current Agent for  
Service of Process  
Island Pacific Supermarkets, Inc.  
20819 Currier Road, Unit 100  
Walnut, CA 91789

On February 12, 2018, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice>:

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Oakland, CA 94612-0550

On December 18, 2017, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to the party listed below:

Stacey Grassini, Deputy District Attorney  
District Attorney, Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
[sgrassini@contracostada.org](mailto:sgrassini@contracostada.org)

Allison Haley, District Attorney  
District Attorney, Napa County  
1127 First Street, Suite C  
Napa, CA 94559  
[CEPD@countyofnapa.org](mailto:CEPD@countyofnapa.org)



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Birgit Fladager, District Attorney  
District Attorney, Stanislaus County  
832 12th Street, Suite 300  
Modesto, CA 95354  
[Prop65@standa.org](mailto:Prop65@standa.org)

Paul E. Zellerbach  
District Attorney, Riverside County  
3072 Orange Street  
Riverside, CA 92501  
[Prop65@rivcoda.org](mailto:Prop65@rivcoda.org)

Dije Ndreu, Deputy District Attorney  
District Attorney, Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
[Prop65DA@co.monterey.ca.us](mailto:Prop65DA@co.monterey.ca.us)

Philip J. Cline  
District Attorney, Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
[Prop65@co.tulare.ca.us](mailto:Prop65@co.tulare.ca.us)

Yen Dang, Supervising Deputy District Attorney  
District Attorney, Santa Clara County  
70 W Hedding St  
San Jose, CA 95110  
[EPU@da.sccgov.org](mailto:EPU@da.sccgov.org)

Gregory D. Totten  
District Attorney, Ventura County  
800 S Victoria Ave  
Ventura, CA 93009  
[daspecialops@ventura.org](mailto:daspecialops@ventura.org)

Stephan R. Passalacqua, District Attorney  
District Attorney, Sonoma County  
600 Administration Dr  
Sonoma, CA 95403  
[jbarnes@sonoma-county.org](mailto:jbarnes@sonoma-county.org)

Michelle Latimer, Program Coordinator  
District Attorney, Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
[mlatimer@co.lassen.ca.us](mailto:mlatimer@co.lassen.ca.us)

Anne Marie Schubert, District Attorney  
District Attorney, Sacramento County  
901 G Street  
Sacramento, CA 95814  
[Prop65@sacda.org](mailto:Prop65@sacda.org)

Gregory Alker, Assistant District Attorney  
District Attorney, San Francisco County  
732 Brannan Street  
San Francisco, CA 94103  
[Gregory.alker@sfgov.org](mailto:Gregory.alker@sfgov.org)

Tori Verber Salazar, District Attorney  
District Attorney, San Joaquin County  
222 E. Weber Avenue, Rm 202  
Stockton, CA 95202  
[DAConsumer.Environmental@sjcda.org](mailto:DAConsumer.Environmental@sjcda.org)

Eric J. Dobroth, Deputy District Attorney  
District Attorney, San Luis Obispo County  
County Government Center Annex, 4th Floor  
San Luis Obispo, CA 93408  
[edobroth@co.slo.ca.us](mailto:edobroth@co.slo.ca.us)

Jeff W. Reisig, District Attorney  
District Attorney, Yolo County  
301 Second Street  
Woodland, CA 95695  
[cfepd@volocounty.org](mailto:cfepd@volocounty.org)

Jeffrey S. Rosell, District Attorney  
District Attorney, Santa Cruz County  
701 Ocean Street  
Santa Cruz, CA 95060  
[Prop65DA@santacruzcounty.us](mailto:Prop65DA@santacruzcounty.us)

On February 12, 2018, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE § 25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by U.S. First Class Mail.



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Executed on February 12, 2018, in Berkeley, California.

Amanda M. Prasuhn

**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, Lake County 255 N. Forbes Street Lakeport, CA 95453
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, Shasta County 1355 West Street Redding, CA 96001
District Attorney, Amador County 708 Court Street Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, Sierra County PO Box 457 Downieville, CA 95936
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097
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, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	Sacramento City Attorney's Office 915 I Street, 4 <sup>th</sup> Floor Sacramento, CA 95814
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080



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District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Humboldt County 825 5th Street 4th Floor Eureka, CA 95501	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Inyo County 162 E. Line St. Bishop, CA 93514	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, San Bernardino County 303 West 3 <sup>rd</sup> Street, 6 <sup>th</sup> Floor San Bernardino, CA 92415-0502	San Francisco, City Attorney City Hall, 234 1 Dr. Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	

## APPENDIX A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

#### THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

**The "Proposition 65 List."** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to

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<sup>1</sup> All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

***Clear and reasonable warnings.*** A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

***Prohibition from discharges into drinking water.*** A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

#### ***DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?***

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

***Grace Period.*** Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

***Governmental agencies and public water utilities.*** All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

***Businesses with nine or fewer employees.*** Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.



**Exposures that pose no significant risk of cancer.** For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "No Significant Risk Levels" (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

**Exposures that will produce no observable reproductive effect at 1,000 times the level in question.** For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level" divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

**Exposures to Naturally Occurring Chemicals in Food.** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

**Discharges that do not result in a "significant amount" of the listed chemical entering any source of drinking water.** The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" level for chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

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<sup>2</sup> See Section 25501(a)(4).

## *HOW IS PROPOSITION 65 ENFORCED?*

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at:  
<http://oehha.ca.gov/prop65/law/p65law72003.html>.

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...*

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at  
[P65Public.Comments@oehha.ca.gov](mailto:P65Public.Comments@oehha.ca.gov).

Revised: May 2017

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.