

1 Plaintiff, **PUBLIC HEALTH AND SAFETY ADVOCATES, LLC.** alleges two (2) causes of
2 action against Defendants, **HAITAI USA, INC.** and DOES 1 through 50, inclusive as follows:

3 **THE PARTIES**

4 **1.** Plaintiff, **PUBLIC HEALTH AND SAFETY ADVOCATES, LLC.** (“PHSA” or
5 “Plaintiff”) is an organization qualified to do business in the state of California. PHSA is a person within
6 the meaning of *Health & Safety Code §25249.11(a)*, and is dedicated to protecting the public from
7 environmental health hazards and toxic exposures. PHSA, acting as a private attorney general, brings
8 this enforcement action in the public interest pursuant to *Health & Safety Code §25249.7(d)*.

9 **2.** Defendants, **HAITAI USA, INC.** (“Haitai USA, Inc.” or “Defendants”) is a California
10 corporation qualified to do business in California. Upon information and belief, Plaintiff contends that
11 the Defendants have conducted business within California at all relevant times herein.

12 **3.** Plaintiff is presently unaware of the true names and capacities of Defendants, DOES 1
13 through 50, and therefore sues these Defendants by such fictitious names. Plaintiff will amend this
14 Complaint to allege the true names and capacities of said Defendants when the identities are ascertained.
15 Plaintiff is informed, believes and thereon alleges that each fictitiously named Defendant is responsible
16 in some manner for the occurrences herein alleged and the damages caused.

17 **4.** Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
18 times mentioned herein have conducted business within the state of California.

19 **5.** Defendants own, administer, direct, control, sell, distribute, and/or operate facilities that
20 place two (2) products into the stream of commerce in California. The products (“Products”) are
21 outlined herein: (1) Seasoned Shredded Cuttlefish UPC #020914812469 and (2) Seasoned Shredded
22 Cuttlefish UPC #020914812476. Due to several chemicals in the Products, the Defendants are required
23 to provide “clear and reasonable” warnings to consumers about the chemicals under Proposition 65.

24 **6.** At all times mentioned herein, Defendants were legally responsible for compliance with
25 the provisions of Proposition 65. Whenever an allegation regarding any act of any Defendant is made
26 herein, such allegation shall be deemed to mean that Defendants, or its agents, officers, directors,
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1 managers, supervisors, or employees, did or so authorize such acts while engaged in the affairs of
2 Defendants business operations and/or while acting within the course and scope of employment.

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4 7. Upon information and belief, at all relevant times to this action, each of the Defendants,
5 including DOES 1-50, was an agent, servant, or employee of each of the other Defendants. In
6 conducting the activities alleged in this Complaint, each of the Defendants was acting within the course
7 and scope of this agency, service, or employment, and was acting with the consent, permission, and
8 authorization of each of the other Defendants. All actions of each of the Defendants alleged in this
9 Complaint were ratified and approved by every other Defendant or their officers or managing agents,
10 and/or negligently failed and omitted to act or adequately and properly supervise, control, or direct its
11 employees and agents while engaged in the management, direction, operation, or control of the affairs of
12 the business organizations. Alternatively, each of the Defendants aided, conspired with and/or
13 facilitated the alleged wrongful conduct of each of the other Defendants.

14 8. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
15 Defendants was a person doing business within the meaning of *Health & Safety Code §25249.11(b)*, and
16 that each of the Defendants had ten (10) or more employees at all relevant times.

17 JURISDICTION

18 9. This Court has jurisdiction over this action pursuant to *California Constitution*,
19 *Article VI, Section 10*, which grants the Superior Court original jurisdiction in all causes except
20 those given by statute to other trial courts. This Court has jurisdiction over this action pursuant to
21 *Health and Safety Code Section 25249.7*, which allows enforcement of violations of Proposition 65
22 in any Court of competent jurisdiction.

23 10. This Court has jurisdiction over Defendants named herein because Defendants either
24 reside in California, are located in California, are foreign corporations authorized to do business in
25 California, are registered with the California Secretary of State, do sufficient business in California,
26 have sufficient minimum contacts with California, or otherwise intentionally avail themselves of
27 the markets within California through their manufacture, distribution, promotion, marketing, or sale
28 of their products within California to render the exercise of jurisdiction by the California courts

1 **15.** Proposition 65 provides that any person “violating or threatening to violate” the
2 statute may be enjoined in a court of competent jurisdiction. *Health & Safety Code § 25249.7.*
3 “Threaten to violate” means “to create a condition in which there is a substantial probability that a
4 violation will occur.” *Id.*, § 25249.11 (e). Defendants are also liable for civil penalties of up to
5 \$2,500.00 per day per violation, recoverable in a civil action. *Id.*, § 25249.7 (b).
6

7 **16.** Plaintiff identified certain practices of manufacturers and distributors of cuttlefish
8 who both in the past and presently, knowingly and intentionally expose, persons in California to
9 Lead and Lead Compounds (“Lead”) in such products without first providing clear and reasonable
10 warnings of such to the exposed persons prior to the time of exposure. Plaintiff later discerned that
11 Defendants engaged in such practice.

12 **17.** On February 27, 1987, the Governor of California added Lead to the list of
13 chemicals known to the State to cause developmental and reproductive toxicity. *Cal. Code Regs.*
14 *Tit. 27, §27001 (c).* Lead is known to cause developmental and reproductive toxicity, in both males
15 and females. The Proposition 65 warning requirements and discharge prohibitions became
16 applicable to Lead within twenty (20) months after Lead was added to the list of chemicals known
17 to cause developmental and reproductive toxicity. *Health & Safety Code §§ 25249.9 and 25249.10.*
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19 **18.** On October 1, 1992, the Governor of California added Lead to the list of chemicals
20 known to the State to cause cancer. *Cal. Code Regs. Tit. 27 §27001(b).* The Proposition 65
21 warning requirements and discharge prohibitions became applicable to Lead within twenty (20)
22 months after Lead was added to the list of chemicals known to cause cancer. *Health & Safety Code*
23 *§§ 25249.9 and 25249.10.*

24 **19.** The level of exposure to a chemical causing cancer, or reproductive toxicity under
25 Proposition 65 is determined by multiplying the level in question times the reasonably anticipated
26 rate of exposure for an individual to a given medium. *27 C.C.R. § 25821(b).* For exposure to
27 consumer products, the level of exposure is calculated using the reasonably anticipated rate of
28 intake or exposure for average users of the consumer product. *27 C.C.R. § 25821(C)(2).*

20. Defendants manufacture and distribute two (2) products, (1) Seasoned Shredded

1 Cuttlefish, UPC # 020914812469; (2) Seasoned Shredded Cuttlefish, UPC #020914812476
2 (“Products”) which contain sufficient quantities of Lead such that consumers, including pregnant
3 women, who consume the Products are exposed to Lead. The primary route of exposure for the
4 violations happens when consumers ingest the Products orally. These exposures occur in homes,
5 workplaces and everywhere in California where the Products are consumed.
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7 **21.** During the relevant one-year period herein, no clear and reasonable warning was
8 provided to consumers when the products were manufactured and released into the stream of
9 commerce to warn consumers about the possible exposure to cancer, developmental or reproductive
10 hazards from Lead when the Products are consumed.

11 **NOTICE OF VIOLATION**

12 **22.** At all times relevant to this action, the Defendants have knowingly and intentionally
13 exposed the users/consumers of the Products to Lead by recommending that consumers ingest the
14 Products without first giving a clear and reasonable warning to such individuals.

15 **23.** The Defendants have sold the Products to consumers in California at least since
16 June 22, 2019. The Products continue to be imported, distributed and sold in California without the
17 requisite warning information. Consumers are exposed to Lead when the Products are ingested.

18 **24.** On or about June 22, 2020, Plaintiff gave notice (“Notice”) of the alleged violations
19 of *Health & Safety Code §25249.6* for the Products to Defendants, the California Attorney General,
20 the District Attorney for each county in California and the City Attorney for San Francisco, San
21 Diego, San Jose, Sacramento and Los Angeles. In compliance with *Health and Safety Code*
22 *§25249.7(d)* and *27 C.C.R. Code §25903(b)*, each Notice included the following information: the
23 name, address, and telephone number of the noticing party; the name of the alleged violator; the
24 statute violated; the approximate time period during which violations occurred; and descriptions of
25 the violations including the chemicals involved, the routes of toxic exposure, and the specific
26 product or type of product causing the violations.

27 **25.** Before sending the Notice of alleged violations, Plaintiff investigated the Products
28 to determine the likelihood that such products would cause consumers to sustain significant

1 exposure to Lead. Plaintiff hired a well-respected and accredited testing laboratory to test the
2 Products. This laboratory uses testing protocols established and approved by the California
3 Attorney General.

4 **26.** Plaintiff also sent a Certificate of Merit for each Notice to the California Attorney
5 General, the District Attorneys of every county in California, the City Attorneys of every city in
6 California with a population greater than 750,000 and to the named Defendants. In compliance with
7 *Health & Safety Code* § 2521-9.7(d) and *11 C.C.R. § 3101*, each Certificate certified that Plaintiffs’
8 counsel: (1) has consulted with one or more persons with relevant and appropriate experience or
9 expertise who reviewed facts, studies or other data regarding the exposures to lead alleged in each
10 Notice; and (2) based on the information obtained through such consultations, believes that there is
11 a reasonable and meritorious case for a citizen enforcement action based on the facts alleged in
12 each Notice.

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14 **27.** In reliance on the expert’s evaluation of the Products, Plaintiffs’ counsel is informed
15 and believes and thereon alleges that there is a reasonable and meritorious case against Defendants
16 for this private action.

17 **28.** Any person acting in the public interest has standing to enforce violations of
18 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid
19 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action
20 within such time. *Health & Safety Code* § 25249.7(d)

21 **29.** Plaintiff’s notice of alleged violations also included a Certificate of Service and a
22 document entitled “The Safe Drinking Water & Toxic Enforcement Act of 1986: A Summary”
23 *Health & Safety Code* § 25249.7(d)

24 **30.** Plaintiff is commencing this action more than sixty (60) days from the date Plaintiff
25 gave notice of the alleged violations to Defendants and the public prosecutor outlined above.

26 **31.** Plaintiff is informed, believes and thereon alleges that none of the public
27 prosecutors with the authority to prosecute violations of Proposition 65 has commenced or is
28 diligently prosecuting an action against the Defendants under *Health and Safety Code section*

1 alleges that Defendants manufactured, distributed, or sold the product Seasoned Shredded
2 Cuttlefish, without first providing any type of clear and reasonable warning of such to the exposed
3 persons before the time of exposure. Defendants know and intend that California consumers will
4 use and consume Seasoned Shredded Cuttlefish, thereby exposing them to Lead. Therefore,
5 Defendants violated Proposition 65.

6
7 **39.** The primary exposure to the Lead found in Seasoned Shredded Cuttlefish comes
8 from dermal contact, as well as direct and indirect ingestion and inhalation of the product. Persons
9 sustain exposures by eating and consuming Seasoned Shredded Cuttlefish and handling Seasoned
10 Shredded Cuttlefish without wearing gloves or any other personal equipment, or by touching bare
11 skin or mucus membrane with after handling Seasoned Shredded Cuttlefish, as well as through
12 direct and indirect hand to mouth contact, hand to mucous membrane, or breathing in particulate
13 matter dispersed from Seasoned Shredded Cuttlefish.

14 **40.** Plaintiff is informed, believes and thereon alleges that each of the Defendants'
15 violations of Proposition 65 as to Seasoned Shredded Cuttlefish has been ongoing and continuous,
16 as Defendants engaged and continue to engage in conduct which violates *Health and Safety Code §*
17 *25249.6*, including the manufacture, distribution, promotion and sale of Seasoned Shredded
18 Cuttlefish, so that a separate and distinct violation of Proposition 65 occurs each time a person is
19 exposed to Lead by Seasoned Shredded Cuttlefish as mentioned herein.
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21 **41.** Plaintiff is informed, believes, and thereon alleges that each violation of Proposition
22 65 mentioned herein is ever continuing. Plaintiff further alleges and believes that the violations
23 alleged herein will continue to occur into the future.

24 **42.** Based on the allegations herein, Defendants are liable for civil penalties of up to
25 \$2,500.00 per day per individual exposure to Lead from Seasoned Shredded Cuttlefish pursuant to
26 Health and Safety Code §25249.7(b).
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1 **SECOND CAUSE OF ACTION**

2 **Violation of Proposition 65, The Sate Drinking Water and Toxic Enforcement Act of 1986**
3 **(Health & Safety Code §25249.5, et seq.)**

4 43. Plaintiff incorporates by reference paragraphs 1 through 42 of this Complaint as
5 though fully set forth herein.

6 44. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
7 importer, distributor, wholesaler, promoter, or retailer of Seasoned Shredded Cuttlefish, UPC #
8 020914812476.

9 45. Seasoned Shredded Cuttlefish contains Lead.

10 46. Defendants knew or should have known that Lead has been identified by the State of
11 California as chemicals known to cause cancer and reproductive toxicity and were therefore subject
12 to Proposition 65 warnings requirement. Defendants were also informed of the presence of Lead in
13 Seasoned Shredded Cuttlefish and the Proposition 65 violations when the Plaintiff served Notice to
14 Defendants on June 22, 2020.

15 47. The allegations surrounding Seasoned Shredded Cuttlefish involve “[c]onsumer
16 products exposure[s]” which “is an exposure that results from a person’s acquisition, purchase,
17 storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure
18 that results from receiving a consumer service.” *Cal. Code Regs. Tit.27 § 25602 (b)*. Gudgeon Fish
19 is a consumer product, and as mentioned herein, exposures to Lead took place as a result of such
20 normal and foreseeable consumption and use.

21 48. Plaintiff is informed, believes, and thereon alleges that at least since June 22, 2020
22 and the present, each of the Defendants knowingly and intentionally exposed California consumers
23 and users of Seasoned Shredded Cuttlefish to Lead. Plaintiff is informed, believes, and thereon
24 alleges that Defendants manufactured, distributed, or sold the product Seasoned Shredded
25 Cuttlefish, without first providing any type of clear and reasonable warning of such to the exposed
26 persons before the time of exposure. Defendants know and intend that California consumers will
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1 2. An injunctive order, pursuant to *Health and Safety Code §25249.7(b)* and *CCR title*
2 *27, §25603 and 25603.1*, compelling Defendants to adopt a compliance program by either (a)
3 reformulating the products such that no Proposition 65 warnings are required, or (b) providing
4 “clear and reasonable” warnings on the labels of the subject Products.

5 3. An award of reasonable attorney’s fees and cost; and


6 4. Such other and further relief that the Court may deem just and equitable.

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9 DATED: 6/21/21

BY:  _____

LAW OFFICES OF DANIALPOUR &
ASSOCIATES
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15 DATED: 6/17/21

BY:  _____

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