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12 **PUBLIC HEALTH AND SAFETY ADVOCATES, LLC.**

13
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF LOS ANGELES**

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18 **PUBLIC HEALTH AND SAFETY**
18 **ADVOCATES, LLC., a Limited Liability**
19 **Company, in the public interest,**
20 **Plaintiff,**

21 v.

22 **RICHWELL GROUP, INC., a California**
23 **Corporation dba MAXFIELD SEAFOOD and**
24 **DOES 1 through 50, inclusive,**
25 **Defendant(s)**

21STCV23081
CASE NO.: 21STCV23081

**COMPLAINT FOR PENALTY AND
INJUNCTION**

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

UNLIMITED CIVIL

1 Plaintiff, **PUBLIC HEALTH AND SAFETY ADVOCATES, LLC.** alleges twelve (6) causes
2 of action against Defendants, **RICHWELL GROUP, INC. dba MAXFIELD SEAFOOD** and DOES 1
3 through 50, inclusive as follows:

4 **THE PARTIES**

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

10 **2.** Defendants, **RICHWELL GROUP, INC. dba MAXFIELD SEAFOOD** (“Richwell
11 Group” or “Defendants”) is a California corporation qualified to do business in California. Upon
12 information and belief, Plaintiff contends that the Defendants have conducted business within California
13 at all relevant times herein.

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

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

21 **5.** Defendants own, administer, direct, control, sell, distribute, and/or operate facilities that
22 place six (6) products into the stream of commerce in California. The products (“Products”) are outlined
23 herein: (1) Whole Round Gudgeon Fish, UPC # 9836015543758; (2) Whole Spiny Goby Fish, UPC
24 #8936015541462; (3) Tinfoil Barb Fish Cooked, UPC #0902583328048; (4) Cooked Rough Periwinkle,
25 UPC #8936015541721; (5) Baby Octopus Whole Cleaned, UPC #8936018430640; (6) Cooked Cockle
26 Clam, UPC #8938506920336. Due to several chemicals in the Products, the Defendants are required to
27 provide “clear and reasonable” warnings to consumers about the chemicals under Proposition 65.
28

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

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

17 **8.** Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
18 Defendants was a person doing business within the meaning of *Health & Safety Code §25249.11(b)*, and
19 that each of the Defendants had ten (10) or more employees at all relevant times.
20

JURISDICTION

21 **9.** This Court has jurisdiction over this action pursuant to *California Constitution,*
22 *Article VI, Section 10*, which grants the Superior Court original jurisdiction in all causes except
23 those given by statute to other trial courts. This Court has jurisdiction over this action pursuant to
24 *Health and Safety Code Section 25249.7*, which allows enforcement of violations of Proposition 65
25 in any Court of competent jurisdiction.
26

27 **10.** This Court has jurisdiction over Defendants named herein because Defendants either
28 reside in California, are located in California, are foreign corporations authorized to do business in
California, are registered with the California Secretary of State, do sufficient business in California,

1 have sufficient minimum contacts with California, or otherwise intentionally avail themselves of
2 the markets within California through their manufacture, distribution, promotion, marketing, or sale
3 of their products within California to render the exercise of jurisdiction by the California courts
4 permissible under traditional notions of fair play and substantial justice.

5
6 **11.** Venue is proper in the County of Los Angeles because one or more of the instances
7 of wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
8 because the Defendants conducted, and continue to conduct business in the County of Los Angeles
9 with respect to the consumer Products that are the subject of this action. Said Products are
10 marketed, offered for sale, sold, used, and/or consumed without clear and reasonable warnings in
11 the County of Los Angeles.

12 **BACKGROUND AND PRELIMINARY FACTS**

13 **12.** In 1986, California voters approved an initiative to address growing concerns about
14 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to chemicals
15 that cause cancer, birth defects, or other reproductive harm.” *Ballot Pamphlet, Proposed Law,*
16 *Gen. Election (Nov.4, 1986) at p.3.* The initiative, the Safe Drinking Water and Toxic Enforcement
17 Act of 1986, codified at *Health & Safety Code § 25249.5, et seq.* (“Proposition 65”), helps to
18 protect California’s drinking water sources from contamination, to allow consumers to make
19 informed choices about the products they buy, and to enable persons to protect themselves from
20 toxic chemicals as they see fit.

21 **13.** Proposition 65 requires the Governor of California to publish a list of chemicals
22 known to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
23 *§ 25249.8.* The list, which the Governor updates at least once a year, contains over 700 chemicals
24 and chemical families. Proposition 65 imposes warning requirements and other controls that apply
25 to Proposition 65-listed chemicals.

26
27 **14.** All businesses with ten (10) or more employees that operate or sell products in
28 California must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited
from knowingly discharging Proposition 65-listed chemicals into sources of drinking water (*Health*

1 & Safety Code, § 25249.5) and (2) required to provide “clear and reasonable” warnings before
2 knowingly and/ or intentionally exposing a person to a proposition 65-listed chemical (*Health &*
3 *Safety Code, § 25249.6*).

4 **15.** Proposition 65 provides that any person “violating or threatening to violate” the
5 statute may be enjoined in a court of competent jurisdiction. *Health & Safety Code § 25249.7*.
6 “Threaten to violate” means “to create a condition in which there is a substantial probability that a
7 violation will occur.” *Id.*, § 25249.11 (e). Defendants are also liable for civil penalties of up to
8 \$2,500.00 per day per violation, recoverable in a civil action. *Id.*, § 25249.7 (b).

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

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

20 **18.** On October 1, 1987, the Governor of California added Cadmium to the list of
21 chemicals known to the State to cause cancer. *Cal. Code Regs. Tit. 27 §27001(b)*. The Proposition
22 65 warning requirements and discharge prohibitions became applicable to Cadmium within twenty
23 (20) months after Cadmium was added to the list of chemicals known to cause cancer. *Health &*
24 *Safety Code §§ 25249.9 and 25249.10*.

25 **19.** On October 1, 1992, the Governor of California added Lead to the list of chemicals
26 known to the State to cause cancer. *Cal. Code Regs. Tit. 27 §27001(b)*. The Proposition 65
27 warning requirements and discharge prohibitions became applicable to Lead within twenty (20)
28

1 months after Lead was added to the list of chemicals known to cause cancer. *Health & Safety Code*
2 §§ 25249.9 and 25249.10.

3 **20.** On May 1, 1997, the Governor of California added Cadmium to the list of chemicals
4 known to the State to cause developmental and reproductive toxicity. *Cal. Code Regs. Tit. 27,*
5 *§27001 (c).* Lead is known to cause developmental and reproductive toxicity, in both males and
6 females. The Proposition 65 warning requirements and discharge prohibitions became applicable
7 to Cadmium within twenty (20) months after Cadmium was added to the list of chemicals known to
8 cause developmental and reproductive toxicity. *Health & Safety Code §§ 25249.9 and 25249.10.*

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

14 **22.** Defendants manufacture and distribute six (6) products, (1) Whole Round Gudgeon
15 Fish, UPC # 9836015543758; (2) Whole Spiny Goby Fish, UPC #8936015541462; (3) Tinfoil Barb
16 Fish Cooked, UPC #0902583328048; (4) Cooked Rough Periwinkle, UPC #8936015541721; (5)
17 Baby Octopus Whole Cleaned, UPC #8936018430640; (6) Cooked Cockle Clam, UPC
18 #8938506920336 (“Products”) which contain sufficient quantities of Lead and/or Cadmium such
19 that consumers, including pregnant women, who consume the Products are exposed to Lead and/or
20 Cadmium. The primary route of exposure for the violations happens when consumers ingest the
21 Products orally. These exposures occur in homes, workplaces and everywhere in California where
22 the Products are consumed.

23 **23.** During the relevant one-year period herein, no clear and reasonable warning was
24 provided to consumers when the products were manufactured and released into the stream of
25 commerce to warn consumers about the possible exposure to cancer, developmental or reproductive
26 hazards from Lead or Cadmium when the Products are consumed.

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2 **NOTICE OF VIOLATION**

3 **24.** At all times relevant to this action, the Defendants have knowingly and intentionally
4 exposed the users/consumers of the Products to Lead and/or Cadmium by recommending that
5 consumers ingest the Products without first giving a clear and reasonable warning to such
6 individuals.

7 **25.** The Defendants have sold the Products to consumers in California at least since
8 June 22, 2019. The Products continue to be imported, distributed and sold in California without the
9 requisite warning information. Consumers are exposed to Lead and/or Cadmium when the
10 Products are ingested.

11 **26.** On or about June 22, 2020, Plaintiff gave notice (“Notice”) of the alleged violations
12 of *Health & Safety Code §25249.6* for the Products to Defendants, the California Attorney General,
13 the District Attorney for each county in California and the City Attorney for San Francisco, San
14 Diego, San Jose, Sacramento and Los Angeles. In compliance with *Health and Safety Code*
15 *§25249.7(d)* and *27 C.C.R. Code §25903(b)*, each Notice included the following information: the
16 name, address, and telephone number of the noticing party; the name of the alleged violator; the
17 statute violated; the approximate time period during which violations occurred; and descriptions of
18 the violations including the chemicals involved, the routes of toxic exposure, and the specific
19 product or type of product causing the violations.

20 **27.** Before sending the Notice of alleged violations, Plaintiff investigated the Products
21 to determine the likelihood that such products would cause consumers to sustain significant
22 exposure to Lead and/or Cadmium. Plaintiff hired a well-respected and accredited testing
23 laboratory to test the Products. This laboratory uses testing protocols established and approved by
24 the California Attorney General.

25 **28.** Plaintiff also sent a Certificate of Merit for each Notice to the California Attorney
26 General, the District Attorneys of every county in California, the City Attorneys of every city in
27 California with a population greater than 750,000 and to the named Defendants. In compliance with
28 *Health & Safety Code§ 2521-9.7(d)* and *11 C.C.R. § 3101*, each Certificate certified that Plaintiffs’

1 counsel: (1) has consulted with one or more persons with relevant and appropriate experience or
2 expertise who reviewed facts, studies or other data regarding the exposures to lead alleged in each
3 Notice; and (2) based on the information obtained through such consultations, believes that there is
4 a reasonable and meritorious case for a citizen enforcement action based on the facts alleged in
5 each Notice.

6
7 **29.** In reliance on the expert's evaluation of the Products, Plaintiffs' counsel is informed
8 and believes and thereon alleges that there is a reasonable and meritorious case against Defendants
9 for this private action.

10 **30.** Any person acting in the public interest has standing to enforce violations of
11 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid
12 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action
13 within such time. *Health & Safety Code § 25249.7(d)*

14 **31.** Plaintiff's notice of alleged violations also included a Certificate of Service and a
15 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986: A Summary"
16 *Health & Safety Code § 25249.7(d)*

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

19 **33.** Plaintiff is informed, believes and thereon alleges that none of the public
20 prosecutors with the authority to prosecute violations of Proposition 65 has commenced or is
21 diligently prosecuting an action against the Defendants under *Health and Safety Code section*
22 *25249.5, et seq.* based on the allegations herein.

23 **34.** Plaintiff has engaged in good faith efforts to resolve the alleged violation prior to
24 filing this Complaint.

25 **FIRST CAUSE OF ACTION**

26 **Violation of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986** 27 **(Health & Safety Code §25249.5, et seq.)**

28 **35.** Plaintiff incorporates by reference paragraphs 1 through 34 of this Complaint as
though fully set forth herein.

1 **36.** Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
2 importer, distributor, wholesaler, promoter, or retailer of Whole Round Gudgeon Fish (“Gudgeon
3 Fish”), UPC # 9836015543758.

4 **37.** Gudgeon Fish contains Lead.

5
6 **38.** Defendants knew or should have known that Lead has been identified by the State of
7 California as chemicals known to cause cancer and reproductive toxicity and were therefore subject
8 to Proposition 65 warnings requirement. Defendants were also informed of the presence of Lead in
9 Gudgeon Fish and the Proposition 65 violations when the Plaintiff served Notice to Defendants on
10 June 22, 2020.

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

17
18 **40.** Plaintiff is informed, believes, and thereon alleges that at least since June 22, 2020
19 and the present, each of the Defendants knowingly and intentionally exposed California consumers
20 and users of Gudgeon Fish to Lead. Plaintiff is informed, believes, and thereon alleges that
21 Defendants manufactured, distributed, or sold the product Gudgeon Fish, without first providing
22 any type of clear and reasonable warning of such to the exposed persons before the time of
23 exposure. Defendants know and intend that California consumers will use and consume Gudgeon
24 Fish, thereby exposing them to Lead. Therefore, Defendants violated Proposition 65.

25
26 **41.** The primary exposure to the Lead found in Gudgeon Fish comes from dermal
27 contact, as well as direct and indirect ingestion and inhalation of the product. Persons sustain
28 exposures by eating and consuming Gudgeon Fish and handling Gudgeon Fish without wearing
gloves or any other personal equipment, or by touching bare skin or mucus membrane with after

1 Goby Fish and the Proposition 65 violations when the Plaintiff served Notice to Defendants on
2 June 22, 2020.

3 **49.** The allegations surrounding Goby Fish involve “[c]onsumer products exposure[s]”
4 which “is an exposure that results from a person’s acquisition, purchase, storage, consumption, or
5 other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a
6 consumer service.” *Cal. Code Regs. Tit.27 § 25602 (b)*. Goby Fish is a consumer product, and as
7 mentioned herein, exposures to Lead took place as a result of such normal and foreseeable
8 consumption and use.

9
10 **50.** Plaintiff is informed, believes, and thereon alleges that at least since June 22, 2020
11 and the present, each of the Defendants knowingly and intentionally exposed California consumers
12 and users of Goby Fish to Lead. Plaintiff is informed, believes, and thereon alleges that Defendants
13 manufactured, distributed, or sold the product Goby Fish, without first providing any type of clear
14 and reasonable warning of such to the exposed persons before the time of exposure. Defendants
15 know and intend that California consumers will use and consume Goby Fish, thereby exposing
16 them to Lead. Therefore, Defendants violated Proposition 65.

17
18 **51.** The primary exposure to the Lead found in Goby Fish comes from dermal contact,
19 as well as direct and indirect ingestion and inhalation of the product. Persons sustain exposures by
20 eating and consuming Goby Fish and handling Goby Fish without wearing gloves or any other
21 personal equipment, or by touching bare skin or mucus membrane with after handling Goby Fish,
22 as well as through direct and indirect hand to mouth contact, hand to mucous membrane, or
23 breathing in particulate matter dispersed from Goby Fish.

24 **52.** Plaintiff is informed, believes and thereon alleges that each of the Defendants’
25 violations of Proposition 65 as to Goby Fish has been ongoing and continuous, as Defendants
26 engaged and continue to engage in conduct which violates *Health and Safety Code § 25249.6*,
27 including the manufacture, distribution, promotion and sale of Goby Fish, so that a separate and
28 distinct violation of Proposition 65 occurs each time a person is exposed to Lead by Goby Fish as

1 normal and foreseeable consumption and use.

2 **60.** Plaintiff is informed, believes, and thereon alleges that at least since June 22, 2020
3 and the present, each of the Defendants knowingly and intentionally exposed California consumers
4 and users of Tinfoil Barb Fish to Lead. Plaintiff is informed, believes, and thereon alleges that
5 Defendants manufactured, distributed, or sold the product Tinfoil Barb Fish, without first providing
6 any type of clear and reasonable warning of such to the exposed persons before the time of
7 exposure. Defendants know and intend that California consumers will use and consume Tinfoil
8 Barb Fish, thereby exposing them to Lead. Therefore, Defendants violated Proposition 65.
9

10 **61.** The primary exposure to the Lead found in Tinfoil Barb Fish comes from dermal
11 contact, as well as direct and indirect ingestion and inhalation of the product. Persons sustain
12 exposures by eating and consuming Tinfoil Barb Fish and handling Tinfoil Barb Fish without
13 wearing gloves or any other personal equipment, or by touching bare skin or mucus membrane with
14 after handling Tinfoil Barb Fish, as well as through direct and indirect hand to mouth contact, hand
15 to mucous membrane, or breathing in particulate matter dispersed from Tinfoil Barb Fish.
16

17 **62.** Plaintiff is informed, believes and thereon alleges that each of the Defendants’
18 violations of Proposition 65 as to Tinfoil Barb Fish has been ongoing and continuous, as
19 Defendants engaged and continue to engage in conduct which violates *Health and Safety Code §*
20 *25249.6*, including the manufacture, distribution, promotion and sale of Tinfoil Barb Fish, so that a
21 separate and distinct violation of Proposition 65 occurs each time a person is exposed to Lead by
22 Tinfoil Barb Fish as mentioned herein.

23 **63.** Plaintiff is informed, believes, and thereon alleges that each violation of Proposition
24 65 mentioned herein is ever continuing. Plaintiff further alleges and believes that the violations
25 alleged herein will continue to occur into the future.
26

27 **64.** Based on the allegations herein, Defendants are liable for civil penalties of up to
28 \$2,500.00 per day per individual exposure to Lead from Tinfoil Barb Fish pursuant to Health and
Safety Code §25249.7(b).

1 **FOURTH 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 65. Plaintiff incorporates by reference paragraphs 1 through 64 of this Complaint as
5 though fully set forth herein.

6 66. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
7 importer, distributor, wholesaler, promoter, or retailer of Cooked Rough Periwinkle (“Rough
8 Periwinkle”), UPC #8936015541721.

9 67. Rough Periwinkle contains Lead and Cadmium.

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

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

21 70. 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 Rough Periwinkle to Lead and Cadmium. Plaintiff is informed, believes, and thereon
24 alleges that Defendants manufactured, distributed, or sold the product Rough Periwinkle, without
25 first providing any type of clear and reasonable warning of such to the exposed persons before the
26 time of exposure. Defendants know and intend that California consumers will use and consume
27
28

1 Rough Periwinkle, thereby exposing them to Lead and Cadmium. Therefore, Defendants violated
2 Proposition 65.

3 71. The primary exposure to the Lead and Cadmium found in Rough Periwinkle comes
4 from dermal contact, as well as direct and indirect ingestion and inhalation of the product. Persons
5 sustain exposures by eating and consuming Rough Periwinkle and handling Rough Periwinkle
6 without wearing gloves or any other personal equipment, or by touching bare skin or mucus
7 membrane with after handling Rough Periwinkle, as well as through direct and indirect hand to
8 mouth contact, hand to mucous membrane, or breathing in particulate matter dispersed from Rough
9 Periwinkle.
10

11 72. Plaintiff is informed, believes and thereon alleges that each of the Defendant's
12 violations of Proposition 65 as to Rough Periwinkle has been ongoing and continuous, as
13 Defendants engaged and continue to engage in conduct which violates *Health and Safety Code §*
14 *25249.6*, including the manufacture, distribution, promotion and sale of Rough Periwinkle, so that
15 a separate and distinct violation of Proposition 65 occurs each time a person is exposed to Lead and
16 Cadmium by Rough Periwinkle as mentioned herein.
17

18 73. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition
19 65 mentioned herein is ever continuing. Plaintiff further alleges and believes that the violations
20 alleged herein will continue to occur into the future.

21 74. Based on the allegations herein, Defendants are liable for civil penalties of up to
22 \$2,500.00 per day per individual exposure to Lead and Cadmium from Rough Periwinkle, pursuant
23 to Health and Safety Code §25249.7(b).
24

25 **FIFTH CAUSE OF ACTION**

26 **Violation of Proposition 65, The Sate Drinking Water and Toxic Enforcement Act of 1986** 27 **(Health & Safety Code §25249.5, et seq.)**

28 75. Plaintiff incorporates by reference paragraphs 1 through 74 of this Complaint as
though fully set forth herein.

1 **76.** Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
2 importer, distributor, wholesaler, promoter, or retailer of Baby Octopus Whole Cleaned “Baby
3 Octopus”), UPC #8936018430640

4 **77.** Baby Octopus contains Lead and Cadmium.

5
6 **78.** Defendants knew or should have known that Lead and Cadmium have been
7 identified by the State of California as chemicals known to cause cancer and reproductive toxicity
8 and were therefore subject to Proposition 65 warnings requirement. Defendants were also
9 informed of the presence of Lead and Cadmium in Baby Octopus and the Proposition 65 violations
10 when the Plaintiff served Notice to Defendants on June 22, 2020.

11 **79.** The allegations surrounding Baby Octopus involves “[c]onsumer products
12 exposure[s]” which “is an exposure that results from a person’s acquisition, purchase, storage,
13 consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results
14 from receiving a consumer service.” *Cal. Code Regs. Tit.27 § 25602 (b)*. Baby Octopus is a
15 consumer product, and as mentioned herein, exposures to Lead and Cadmium took place as a result
16 of such normal and foreseeable consumption and use.

17
18 **80.** Plaintiff is informed, believes, and thereon alleges that at least since June 22, 2020
19 and the present, each of the Defendants knowingly and intentionally exposed California consumers
20 and users of Baby Octopus to Lead and Cadmium. Plaintiff is informed, believes, and thereon
21 alleges that Defendants manufactured, distributed, or sold the product Baby Octopus, without first
22 providing any type of clear and reasonable warning of such to the exposed persons before the time
23 of exposure. Defendants know and intend that California consumers will use and consume Baby
24 Octopus, thereby exposing them to Lead and Cadmium. Therefore, Defendants violated Proposition
25 65.

26
27 **81.** The primary exposure to the Lead and Cadmium found in Baby Octopus comes
28 from dermal contact, as well as direct and indirect ingestion and inhalation of the product. Persons
sustain exposures by eating and consuming Baby Octopus and handling Baby Octopus without

1 and were therefore subject to Proposition 65 warnings requirement. Defendants were also
2 informed of the presence of Lead and Cadmium in Cooked Cockle Clam and the Proposition 65
3 violations when the Plaintiff served Notice to Defendants on June 22, 2020.

4 **89.** The allegations surrounding Cooked Cockle Clam involves “[c]onsumer products
5 exposure[s]” which “is an exposure that results from a person’s acquisition, purchase, storage,
6 consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results
7 from receiving a consumer service.” *Cal. Code Regs. Tit.27 § 25602 (b)*. Cooked Cockle Clam is a
8 consumer product, and as mentioned herein, exposures to Lead and Cadmium took place as a result
9 of such normal and foreseeable consumption and use.

10
11 **90.** Plaintiff is informed, believes, and thereon alleges that at least since June 22, 2020
12 and the present, each of the Defendants knowingly and intentionally exposed California consumers
13 and users of Cooked Cockle Clam to Lead and Cadmium. Plaintiff is informed, believes, and
14 thereon alleges that Defendants manufactured, distributed, or sold the product Cooked Cockle
15 Clam, without first providing any type of clear and reasonable warning of such to the exposed
16 persons before the time of exposure. Defendants know and intend that California consumers will
17 use and consume Cooked Cockle Clam, thereby exposing them to Lead and Cadmium. Therefore,
18 Defendants violated Proposition 65.

19
20 **91.** The primary exposure to the Lead and Cadmium found in Cooked Cockle Clam
21 comes from dermal contact, as well as direct and indirect ingestion and inhalation of the product.
22 Persons sustain exposures by eating and consuming Cooked Cockle Clam and handling Cooked
23 Cockle Clam without wearing gloves or any other personal equipment, or by touching bare skin or
24 mucus membrane with after handling Cooked Cockle Clam, as well as through direct and indirect
25 hand to mouth contact, hand to mucous membrane, or breathing in particulate matter dispersed
26 from Cooked Cockle Clam.

27
28 **92.** Plaintiff is informed, believes and thereon alleges that each of the Defendant’s
violations of Proposition 65 as to Cooked Cockle Clam has been ongoing and continuous, as

