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

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 9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 10 **COUNTY OF LOS ANGELES**

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 13 **PUBLIC HEALTH AND SAFETY**
 14 **ADVOCATES, LLC., a Limited Liability**
 15 **Company, in the public interest,**
 16 **Plaintiff,**

17 **v.**

18 **BEST INTERNATIONAL TRADING, INC., a**
 19 **California Corporation and DOES 1 through**
 20 **50, inclusive,**
 21 **Defendant(s)**

CASE NO.: 21STCV23757

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

23 Plaintiff, **PUBLIC HEALTH AND SAFETY ADVOCATES, LLC.** alleges one (1) cause of
 24 action against Defendants, **BEST INTERNATIONAL TRADING, INC.** and DOES 1 through 50,
 25 inclusive as follows:

26 **THE PARTIES**

27 **1.** Plaintiff, **PUBLIC HEALTH AND SAFETY ADVOCATES, LLC.** (“PHSA” or
 28 “Plaintiff”) is an organization qualified to do business in the state of California. PHSA is a person within

1 the meaning of *Health & Safety Code §25249.11(a)*, and is dedicated to protecting the public from
2 environmental health hazards and toxic exposures. PHSA, acting as a private attorney general, brings
3 this enforcement action in the public interest pursuant to *Health & Safety Code §25249.7(d)*.

4 2. Defendants, **BEST INTERNATIONAL TRADING, INC.** (“Best International Trading,
5 Inc.” or “Defendants”) is a California corporation qualified to do business in California. Upon
6 information and belief, Plaintiff contends that the Defendants have conducted business within California
7 at all relevant times herein.

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

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

15 5. Defendants own, administer, direct, control, sell, distribute, and/or operate facilities that
16 place two (2) products into the stream of commerce in California. The product (“Product”) is outlined
17 herein: (1) Fried Fish Ball UPC #9557240506492. Due to several chemicals in the Product, the
18 Defendants are required to provide “clear and reasonable” warnings to consumers about the chemicals
19 under Proposition 65.
20

21 6. At all times mentioned herein, Defendants were legally responsible for compliance with
22 the provisions of Proposition 65. Whenever an allegation regarding any act of any Defendant is made
23 herein, such allegation shall be deemed to mean that Defendants, or its agents, officers, directors,
24 managers, supervisors, or employees, did or so authorize such acts while engaged in the affairs of
25 Defendants business operations and/or while acting within the course and scope of employment.
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27 7. Upon information and belief, at all relevant times to this action, each of the Defendants,
28 including DOES 1-50, was an agent, servant, or employee of each of the other Defendants. In
conducting the activities alleged in this Complaint, each of the Defendants was acting within the course

1 and scope of this agency, service, or employment, and was acting with the consent, permission, and
2 authorization of each of the other Defendants. All actions of each of the Defendants alleged in this
3 Complaint were ratified and approved by every other Defendant or their officers or managing agents,
4 and/or negligently failed and omitted to act or adequately and properly supervise, control, or direct its
5 employees and agents while engaged in the management, direction, operation, or control of the affairs of
6 the business organizations. Alternatively, each of the Defendants aided, conspired with and/or
7 facilitated the alleged wrongful conduct of each of the other Defendants.
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9 **8.** Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
10 Defendants was a person doing business within the meaning of *Health & Safety Code §25249.11(b)*, and
11 that each of the Defendants had ten (10) or more employees at all relevant times.

12 JURISDICTION

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

18 **10.** This Court has jurisdiction over Defendants named herein because Defendants either
19 reside in California, are located in California, are foreign corporations authorized to do business in
20 California, are registered with the California Secretary of State, do sufficient business in California,
21 have sufficient minimum contacts with California, or otherwise intentionally avail themselves of
22 the markets within California through their manufacture, distribution, promotion, marketing, or sale
23 of their products within California to render the exercise of jurisdiction by the California courts
24 permissible under traditional notions of fair play and substantial justice.

25 **11.** Venue is proper in the County of Los Angeles because one or more of the instances
26 of wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
27 because the Defendants conducted, and continue to conduct business in the County of Los Angeles
28 with respect to the consumer Products that are the subject of this action. Said Products are

1 marketed, offered for sale, sold, used, and/or consumed without clear and reasonable warnings in
2 the County of Los Angeles.

3 **BACKGROUND AND PRELIMINARY FACTS**

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

12 **13.** Proposition 65 requires the Governor of California to publish a list of chemicals
13 known to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
14 *§ 25249.8.* The list, which the Governor updates at least once a year, contains over 700 chemicals
15 and chemical families. Proposition 65 imposes warning requirements and other controls that apply
16 to Proposition 65-listed chemicals.

17 **14.** All businesses with ten (10) or more employees that operate or sell products in
18 California must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited
19 from knowingly discharging Proposition 65-listed chemicals into sources of drinking water (*Health*
20 *& Safety Code, § 25249.5*) and (2) required to provide “clear and reasonable” warnings before
21 knowingly and/ or intentionally exposing a person to a proposition 65-listed chemical (*Health &*
22 *Safety Code, § 25249.6*).

23 **15.** Proposition 65 provides that any person “violating or threatening to violate” the
24 statute may be enjoined in a court of competent jurisdiction. *Health & Safety Code § 25249.7.*
25 “Threaten to violate” means “to create a condition in which there is a substantial probability that a
26 violation will occur.” *Id., § 25249.11 (e).* Defendants are also liable for civil penalties of up to
27 \$2,500.00 per day per violation, recoverable in a civil action. *Id., § 25249.7 (b).*
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1 **16.** Plaintiff identified certain practices of manufacturers and distributors who both in
2 the past and presently, knowingly and intentionally expose, persons in California to Lead and Lead
3 Compounds (“Lead”) in such products without first providing clear and reasonable warnings of
4 such to the exposed persons prior to the time of exposure. Plaintiff later discerned that Defendants
5 engaged in such practice.
6

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

13 **18.** On October 1, 1992, the Governor of California added Lead to the list of chemicals
14 known to the State to cause cancer. *Cal. Code Regs. Tit. 27 §27001(b)*. The Proposition 65
15 warning requirements and discharge prohibitions became applicable to Lead within twenty (20)
16 months after Lead was added to the list of chemicals known to cause cancer. *Health & Safety Code*
17 *§§ 25249.9 and 25249.10*.

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

23 **20.** Defendants manufacture and distribute one (1) Product, (1) Fried Fish Ball, UPC
24 #9557240506492 which contains sufficient quantities of Lead such that consumers, including
25 pregnant women, who consume the Product are exposed to Lead. The primary route of exposure
26 for the violations happens when consumers ingest the Product orally. These exposures occur in
27 homes, workplaces and everywhere in California where the Product is consumed.
28

21. During the relevant one-year period herein, no clear and reasonable warning was

1 provided to consumers when the products were manufactured and released into the stream of
2 commerce to warn consumers about the possible exposure to cancer, developmental or reproductive
3 hazards from Lead when the Product is consumed.

4 **NOTICE OF VIOLATION**

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

8 **23.** The Defendants have sold the Product to consumers in California at least since June
9 26, 2019. The Product continues to be imported, distributed and sold in California without the
10 requisite warning information. Consumers are exposed to Lead when the Product is ingested.

11 **24.** On or about June 26, 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 **25.** Before sending the Notice of alleged violations, Plaintiff investigated the Product
21 to determine the likelihood that such a product would cause consumers to sustain significant
22 exposure to Lead. Plaintiff hired a well-respected and accredited testing laboratory to test the
23 Product. This laboratory uses testing protocols established and approved by the California Attorney
24 General.

25 **26.** 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
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1 *Health & Safety Code* § 2521-9.7(d) and 11 C.C.R. § 3101, each Certificate certified that Plaintiffs’
2 counsel: (1) has consulted with one or more persons with relevant and appropriate experience or
3 expertise who reviewed facts, studies or other data regarding the exposures to lead alleged in each
4 Notice; and (2) based on the information obtained through such consultations, believes that there is
5 a reasonable and meritorious case for a citizen enforcement action based on the facts alleged in
6 each Notice.

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

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

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

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

20 **31.** Plaintiff is informed, believes and thereon alleges that none of the public
21 prosecutors with the authority to prosecute violations of Proposition 65 has commenced or is
22 diligently prosecuting an action against the Defendants under *Health and Safety Code section*
23 *25249.5, et seq.* based on the allegations herein.

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

26 **FIRST CAUSE OF ACTION**

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

33. Plaintiff incorporates by reference paragraphs 1 through 32 of this Complaint as

1 though fully set forth herein.

2 **34.** Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
3 importer, distributor, wholesaler, promoter, or retailer of Fried Fish Ball UPC #9557240506492.

4 **35.** Fried Fish Ball contains Lead.

5 **36.** Defendants knew or should have known that Lead has been identified by the State of
6 California as chemicals known to cause cancer and reproductive toxicity and were therefore subject
7 to Proposition 65 warnings requirement. Defendants were also informed of the presence of Lead in
8 Fried Fish Ball and the Proposition 65 violations when the Plaintiff served Notice to Defendants on
9 June 26, 2020.

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

16 **38.** Plaintiff is informed, believes, and thereon alleges that at least since June 26, 2020
17 and the present, each of the Defendants knowingly and intentionally exposed California consumers
18 and users of Fried Fish Ball to Lead. Plaintiff is informed, believes, and thereon alleges that
19 Defendants manufactured, distributed, or sold the product Fried Fish Ball, without first providing
20 any type of clear and reasonable warning of such to the exposed persons before the time of
21 exposure. Defendants know and intend that California consumers will use and consume Fried Fish
22 Ball, thereby exposing them to Lead. Therefore, Defendants violated Proposition 65.

23 **39.** The primary exposure to the Lead found in Fried Fish Ball comes from dermal
24 contact, as well as direct and indirect ingestion and inhalation of the product. Persons sustain
25 exposures by eating and consuming Fried Fish Ball and handling Fried Fish Ball without wearing
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1 gloves or any other personal equipment, or by touching bare skin or mucus membrane with after
2 handling Fried Fish Ball, as well as through direct and indirect hand to mouth contact, hand to
3 mucous membrane, or breathing in particulate matter dispersed from Fried Fish Ball.

4 **40.** Plaintiff is informed, believes and thereon alleges that each of the Defendants'
5 violations of Proposition 65 as to Fried Fish Ball has been ongoing and continuous, as Defendants
6 engaged and continue to engage in conduct which violates *Health and Safety Code § 25249.6*,
7 including the manufacture, distribution, promotion and sale of Fried Fish Ball, so that a separate
8 and distinct violation of Proposition 65 occurs each time a person is exposed to Lead by Fried Fish
9 Ball as mentioned herein.

11 **41.** Plaintiff is informed, believes, and thereon alleges that each violation of Proposition
12 65 mentioned herein is ever continuing. Plaintiff further alleges and believes that the violations
13 alleged herein will continue to occur into the future.

14 **42.** Based on the allegations herein, Defendants are liable for civil penalties of up to
15 \$2,500.00 per day per individual exposure to Lead from Fried Fish Ball pursuant to Health and
16 Safety Code §25249.7(b).

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff prays for relief and judgment against Defendants, as follows:

21 **1.** That the Court, pursuant to *Health & Safety Code § 25249.7(b)*, assess civil penalties
22 against the Defendants in the amount of \$2,500.00 per day for each violation of Proposition 65;

23 **2.** An injunctive order, pursuant to *Health and Safety Code §25249.7(b)* and *CCR title*
24 *27, §25603 and 25603.1*, compelling Defendants to adopt a compliance program by either (a)
25 reformulating the products such that no Proposition 65 warnings are required, or (b) providing
26 “clear and reasonable” warnings on the labels of the subject Products.

27 **3.** An award of reasonable attorney’s fees and cost; and
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4. Such other and further relief that the Court may deem just and equitable.

DATED: June 25, 2021 _____

BY:  _____

LAW OFFICES OF DANIALPOUR &
ASSOCIATES
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Attorneys for Plaintiffs,
PUBLIC HEALTH & SAFETY ADVOCATES,
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