

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Steven Kleifield

1 Tiffanie Q. Spivey, Esq., SBN 247901
2 Davar Danialpour, Esq., SBN 257374
3 LAW OFFICES OF DANIALPOUR & ASSOCIATES
4 An Association of Independent Lawyers
5 357 South Robertson Blvd. Suite 400
6 Beverly Hills, California 90211
7 Telephone: (310) 444-0055
8 Facsimile: (310) 444-0066
9 Email: david@davarlaw.com

10 Attorneys for Plaintiff,
11 **PUBLIC HEALTH AND SAFETY ADVOCATES, LLC.**

12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF LOS ANGELES**

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

19 v.

20 **VENUS FOODS, INC. a California**
21 **Corporation; and DOES 1 through 50,**
22 **inclusive,**
23 **Defendant(s)**

CASE NO.: 21STCV10268

**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

24 Plaintiff, PUBLIC HEALTH AND SAFETY ADVOCATES, LLC. alleges two causes of action
25 against Defendants, VENUS FOODS, INC. and DOES 1 through 50 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**
the meaning of *Health & Safety Code §25249.11(a)*, and is dedicated to protecting the public from
environmental health hazards and toxic exposures. PHSA, acting as a private attorney general, brings
this enforcement action in the public interest pursuant to *Health & Safety Code §25249.7(d)*.

1 2. Defendants, **VENUS FOODS, INC.** (“Venus Foods” or “Defendants”) is a California
2 corporation qualified to do business in California. Upon information and belief, Plaintiff contends that
3 the Defendants have conducted business within California at all relevant times herein.
4

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

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

12 5. Defendants own, administer, direct, control, sell, distribute, and/or operate facilities that
13 place Cuttlefish Balls; UPC # 032971251990 and Fu Zhou Fish Balls; UPC # 032971250139
14 (“Products”) into the stream of commerce in California. Due to several chemicals in the Products, the
15 Defendants are required to provide “clear and reasonable” warnings to consumers about the chemicals
16 under Proposition 65.

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

22 7. Upon information and belief, at all relevant times to this action, each of the Defendants,
23 including DOES 1-50, was an agent, servant, or employee of each of the other Defendants. In
24 conducting the activities alleged in this Complaint, each of the Defendants was acting within the course
25 and scope of this agency, service, or employment, and was acting with the consent, permission, and
26 authorization of each of the other Defendants. All actions of each of the Defendants alleged in this
27 Complaint were ratified and approved by every other Defendant or their officers or managing agents.
28 and/or negligently failed and omitted to act or adequately and properly supervise, control, or direct its

1 employees and agents while engaged in the management, direction, operation, or control of the affairs of
2 the business organizations. Alternatively, each of the Defendants aided, conspired with and/or
3 facilitated the alleged wrongful conduct of each of the other Defendants.
4

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

8 **JURISDICTION**

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

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

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

27
28 ///

1 **BACKGROUND AND PRELIMINARY FACTS**

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

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

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

22 **15.** Proposition 65 provides that any person “violating or threatening to violate” the
23 statute may be enjoined in a court of competent jurisdiction. *Health & Safety Code § 25249.7.*
24 “Threaten to violate” means “to create a condition in which there is a substantial probability that a
25 violation will occur.” *Id., § 25249.11 (e).* Defendants are also liable for civil penalties of up to
26 \$2,500.00 per day per violation, recoverable in a civil action. *Id., § 25249.7 (b).*
27

28 **16.** Plaintiff identified certain practices of manufacturers and distributors of cuttlefish
who both in the past and presently, knowingly and intentionally expose, persons in California to

1 Lead and Lead Compounds (“Lead”), and Cadmium and Cadmium Compounds (“Cadmium”) in
2 such products without first providing clear and reasonable warnings of such to the exposed persons
3 prior to the time of exposure. Plaintiff later discerned that Defendants engaged in such practice.

4
5 **17.** On February 27, 1987, the Governor of California added Lead to the list of
6 chemicals known to the State to cause developmental and reproductive toxicity. *Cal. Code Regs.*
7 *Tit. 27, §27001 (c)*. Lead is known to cause developmental and reproductive toxicity, in both males
8 and females. The Proposition 65 warning requirements and discharge prohibitions became
9 applicable to Lead within twenty (20) months after Lead was added to the list of chemicals known
10 to cause developmental and reproductive toxicity. *Health & Safety Code §§ 25249.9 and 25249.10*.

11 **18.** On October 1, 1987, the Governor of California added Cadmium to the list of
12 chemicals known to the State to cause cancer. *Cal. Code Regs. Tit. 27 §27001(b)*. The Proposition
13 65 warning requirements and discharge prohibitions became applicable to Cadmium within twenty
14 (20) months after Cadmium was added to the list of chemicals known to cause cancer. *Health &*
15 *Safety Code §§ 25249.9 and 25249.10*.

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

21 **20.** On May 1, 1997, the Governor of California added Cadmium to the list of chemicals
22 known to the State to cause developmental and reproductive toxicity. *Cal. Code Regs. Tit. 27,*
23 *§27001 (c)*. Lead is known to cause developmental and reproductive toxicity, in both males and
24 females. The Proposition 65 warning requirements and discharge prohibitions became applicable
25 to Cadmium within twenty (20) months after Cadmium was added to the list of chemicals known to
26 cause developmental and reproductive toxicity. *Health & Safety Code §§ 25249.9 and 25249.10*.

27 **21.** The level of exposure to a chemical causing cancer, or reproductive toxicity under
28 Proposition 65 is determined by multiplying the level in question times the reasonably anticipated

1 rate of exposure for an individual to a given medium. *27 C.C.R. § 25821(b)*. For exposure to
2 consumer products, the level of exposure is calculated using the reasonably anticipated rate of
3 intake or exposure for average users of the consumer product. *27 C.C.R. § 25821(C)(2)*.
4

5 **22.** Defendants' manufacture and distribute two specific products, Cuttlefish Balls and
6 Fu Zhou Fish Balls, ("Products") which contain sufficient quantities of Lead and/or Cadmium such
7 that consumers, including pregnant women, who consume the Products are exposed to Lead and/or
8 Cadmium. The primary route of exposure for the violations happens when consumers ingest the
9 Products orally. These exposures occur in homes, workplaces and everywhere in California where
10 the Products are consumed.

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

15 **NOTICE OF VIOLATION**

16 **24.** At all times relevant to this action, the Defendants have knowingly and intentionally
17 exposed the users/consumers of the Products to Lead and/or Cadmium by recommended that
18 consumers ingest the Products without first giving a clear and reasonable warning to such
19 individuals.

20 **25.** The Defendants have sold the Products to consumers in California at least since
21 June 26, 2019. The Products continue to be imported, distributed and sold in California without the
22 requisite warning information. Consumers are exposed to Lead and/or Cadmium when the
23 Products are ingested.

24 **26.** On or about June 26, 2020, Plaintiff gave notice ("Notice") of the alleged violations
25 of *Health & Safety Code §25249.6* for the Products to Defendants, the California Attorney General,
26 the District Attorney for each county in California and the City Attorney for San Francisco, San
27 Diego, San Jose, Sacramento and Los Angeles. In compliance with *Health and Safety Code*
28 *§25249.7(d)* and *27 C.C.R. Code §25903(b)*, each Notice included the following information: the

1 name, address, and telephone of the noticing party; the name of the alleged violator; the statute
2 violated; the approximate time period during which violations occurred; and descriptions of the
3 violations including the chemicals involved, the routes of toxic exposure, and the specific product
4 or type of product causing the violations.

5
6 **27.** Before sending the Notice of alleged violations, Plaintiff investigated the Products
7 to determine the likelihood that such products would cause consumers to sustain significant
8 exposures to Lead and/or Cadmium. Plaintiff hired a well-respected and accredited testing
9 laboratory to test the Products. This laboratory uses testing protocols established and approved by
10 the California Attorney General.

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

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

23 **30.** Any person acting in the public interest has standing to enforce violations of
24 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid
25 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action
26 within such time. *Health & Safety Code* § 25249.7(d)

27 **31.** Plaintiff’s notice of alleged violations also included a Certificate of Service and a
28 document entitled “The Safe Drinking Water & Toxic Enforcement Act of 1986: A Summary”

1 *Health & Safety Code § 25249.7(d)*

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

4 **33.** Plaintiff is informed, believes and thereon alleges that none of the public
5 prosecutors with the authority to prosecute violations of Proposition 65 has commenced or is
6 diligently prosecuting an action against the Defendants under *Health and Safety Code section*
7 *25249.5, et seq.* based on the allegations herein.

8 **34.** Plaintiff has engaged in good faith efforts to resolve the alleged violation prior to
9 filing this Complaint.
10

11 **FIRST CAUSE OF ACTION**

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

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

16 **36.** Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
17 importer, distributor, wholesaler, promoter, or retailer of Cuttlefish Balls; UPC # 032971251990.

18 **37.** Cuttlefish Balls contain Lead and Cadmium.

19 **38.** Defendants knew or should have known that Lead and Cadmium have been
20 identified by the State of California as chemicals known to cause cancer and reproductive toxicity
21 and were therefore subject to Proposition 65 warnings requirement. Defendants were also
22 informed of the presence of Lead and Cadmium in Cuttlefish Balls and the Proposition 65
23 violations when the Plaintiffs served Notice to Defendants on June 26, 2020.

24 **39.** The allegations surrounding Cuttlefish Balls involves “[c]onsumer products
25 exposure[s]” which “is an exposure that results from a person’s acquisition, purchase, storage,
26 consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results
27 from receiving a consumer service.” *Cal. Code Regs. Tit.27 § 25602 (b)*. Cuttlefish Balls are
28

1 consumer products, and as mentioned herein, exposures to Lead and Cadmium took place as a
2 result of such normal and foreseeable consumption and use.

3 **40.** Plaintiff is informed, believes, and thereon alleges that at least since June 26, 2019
4 and the present, each of the Defendants knowingly and intentionally exposed California consumers
5 and users of Cuttlefish Balls to Lead and Cadmium. Plaintiffs are informed, believe, and thereon
6 allege that Defendants manufactured, distributed, or sold the product Cuttlefish Balls, without first
7 providing any type of clear and reasonable warning of such to the exposed persons before the time
8 of exposure. Defendants know and intend that California consumers will use and consume
9 Cuttlefish Balls, thereby exposing them to Lead and Cadmium. Therefore, Defendants violated
10 Proposition 65.
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12 **41.** The primary exposure to the Lead and Cadmium found in Cuttlefish Balls comes
13 from dermal contact, as well as direct and indirect ingestion and inhalation of the product. Persons
14 sustain exposures by eating and consuming Cuttlefish Balls and handling Cuttlefish Balls without
15 wearing gloves or any other personal equipment, or by touching bare skin or mucus membrane with
16 after handling Cuttlefish Balls, as well as through direct and indirect hand to mouth contact, hand
17 to mucous membrane, or breathing in particulate matter dispersed from Cuttlefish Balls.
18

19 **42.** Plaintiffs are informed, believe and thereon alleges that each of the Defendants’
20 violations of Proposition 65 as to Cuttlefish Balls have been ongoing and continuous, as
21 Defendants engaged and continue to engage in conduct which violates *Health and Safety Code §*
22 *25249.6*, including the manufacture, distribution, promotion and sale of Cuttlefish Balls, so that a
23 separate and distinct violation of Proposition 65 occurs each time a person is exposed to Lead and
24 Cadmium by Cuttlefish Balls as mentioned herein.
25

26 **43.** Plaintiff is informed, believes, and thereon alleges that each violation of Proposition
27 65 mentioned herein is ever continuing. Plaintiff further alleges and believes that the violations
28 alleged herein will continue to occur into the future.

44. Based on the allegations herein, Defendants are liable for civil penalties of up to

1 \$2,500.00 per day per individual exposure to Lead and Cadmium from Cuttlefish Balls, pursuant to
2 Health and Safety Code §25249.7(b).

3 **SECOND CAUSE OF ACTION**

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

6 **45.** Plaintiff incorporates by reference paragraphs 1 through 44 of this Complaint as
7 though fully set forth herein.

8 **46.** Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
9 importer, distributor, wholesaler, promoter, or retailer of Fu Zhou Fish Balls; UPC #
10 032971250139.

11 **47.** Fu Zhou Fish Balls contain Lead.

12 **48.** Defendants knew or should have known that Lead has been identified by the State of
13 California as a chemical known to cause cancer and reproductive toxicity and were therefore
14 subject to Proposition 65 warnings requirement. Defendants were also informed of the presence of
15 Lead in Fu Zhou Fish Balls within Plaintiff's notice of alleged violations further discussed above.

16 **49.** The allegations surrounding Fu Zhou Fish Balls involves "[c]onsumer products
17 exposure[s]" which "is an exposure that results from a person's acquisition, purchase, storage,
18 consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results
19 from receiving a consumer service." *Cal. Code Regs. Tit.27 § 25602 (b)*. Fu Zhou Fish Balls are
20 consumer products, and as mentioned herein, exposure to Lead took place as a result of such
21 normal and foreseeable consumption and use.

22 **50.** Plaintiff is informed, believes, and thereon alleges that at least since June 26, 2019
23 to the present, each of the Defendants knowingly and intentionally exposed California consumers
24 and users of Fu Zhou Fish Balls to Lead. Plaintiff is informed, believes, and thereon alleges that
25 Defendants manufactured, distributed, or sold the product Fu Zhou Fish Balls, without first
26 providing any type of clear and reasonable warning of such to the exposed persons before the time
27
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1 of exposure or before distributing/ selling Fu Zhou Fish Balls in California. Defendants know and
2 intend that California consumers will use and consume Fu Zhou Fish Balls, thereby exposing them
3 to Lead. Therefore, Defendants violated Proposition 65.

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

11 **52.** Plaintiff sare informed, believes and thereon alleges that each of the Defendants'
12 violations of Proposition 65 as to Fu Zhou Fish Balls have 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 Fu Zhou Fish Balls, so that
15 a separate and distinct violation of Proposition 65 occurs each time a person is exposed to Lead Fu
16 Zhou Fish Balls as mentioned herein.

17 **53.** Plaintiffs are informed, believes, and thereon alleges that each violation of
18 Proposition 65 mentioned herein is ever continuing. Plaintiffs further allege and believe that the
19 violations alleged herein will continue to occur into the future.

20 **54.** Based on the allegations herein, Defendants are liable for civil penalties of up to
21 \$2,500.00 per day per individual exposure to Lead from Fu Zhou Fish Balls, pursuant to *Health*
22 *and Safety Code §25249.7(b)*.

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26 **PRAYER FOR RELIEF**

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

28 **1.** That the Court, pursuant to *Health & Safety Code§ 25249.7(b)*, assess civil penalties


1 against the Defendants in the amount of \$2,500.00 per day for each violation of Proposition 65;

2 2. An injunctive order, pursuant to *Health and Safety Code §25249.7(b)* and *CCR title*
3 *27, §25603 and 25603.1*, compelling Defendants to adopt a compliance program by either (a)
4 reformulating the products such that no Proposition 65 warnings are required, or (b) providing
5 “clear and reasonable” warnings on the labels of the subject Products.
6

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

8 4. Such other and further relief that the Court may deem just and equitable.
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12 DATED: 3/10/2021

BY: 

13 LAW OFFICES OF DANIALPOUR &
14 ASSOCIATES
15 Tiffanie Q. Spivey, Esq.
16 Davar Danialpour, Esq.
17 Attorneys for Plaintiffs,
18 PUBLIC HEALTH & SAFETY ADVOCATES,
19 LLC.
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