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

11  
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **COUNTY OF LOS ANGELES**

14 **PUBLIC HEALTH AND SAFETY** ) **CASE NO.: 21STCV26316**  
15 **ADVOCATES, LLC., a Limited Liability** )  
16 **Company, in the public interest,** ) **COMPLAINT FOR PENALTY AND**  
17 **Plaintiff,** ) **INJUNCTION**  
18 **v.** ) **Violation of Proposition 65, the Safe Drinking**  
19 **J DELUCA FISH COMPANY, INC., a** ) **Water and Toxic Enforcement Act of 1986**  
20 **California Corporation and DOES 1 through** ) **(Health & Safety Code § 25249.5, et seq.)**  
21 **50, inclusive,** ) **UNLIMITED CIVIL**  
22 **Defendant(s)** )

23 Plaintiff, **PUBLIC HEALTH AND SAFETY ADVOCATES, LLC.** alleges one (1) cause of  
24 action against Defendants, **J DELUCA FISH COMPANY, INC.** and DOES 1 through 50, inclusive as  
25 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, **J DELUCA FISH COMPANY, INC.** (“J Deluca Fish Co.” or  
5 “Defendants”) is a California corporation qualified to do business in California. Upon information and  
6 belief, Plaintiff contends that the Defendants have conducted business within California at all relevant  
7 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 one (1) product into the stream of commerce in California. The product (“Product”) is outlined  
17 herein: (1) Angels Gate Frozen Squid, UPC #878665000129. Due to several chemicals in the Product,  
18 the Defendants are required to provide “clear and reasonable” warnings to consumers about the  
19 chemicals 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.  
26

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.  
8

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 Product is marketed,

1 offered for sale, sold, used, and/or consumed without clear and reasonable warnings in the County  
2 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).*  
28

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

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

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

17           **19.** On October 1, 1992, the Governor of California added Lead to the list of chemicals  
18 known to the State to cause cancer. *Cal. Code Regs. Tit. 27 §27001(b)*. The Proposition 65  
19 warning requirements and discharge prohibitions became applicable to Lead within twenty (20)  
20 months after Lead was added to the list of chemicals known to cause cancer. *Health & Safety Code*  
21 *§§ 25249.9 and 25249.10*.

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

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

6           **22.** Defendants manufacture and distribute one (1) product, Angels Gate Frozen Squid,  
7 UPC #878665000129 (“Product”). The Product contains sufficient quantities of Lead and/or  
8 Cadmium such that consumers, including pregnant women, who consume the Product is exposed  
9 to Lead and/or Cadmium. The primary route of exposure for the violations happens when  
10 consumers ingest the Product orally. These exposures occur in homes, workplaces and everywhere  
11 in California where the Product is consumed.  
12

13           **23.** During the relevant one-year period herein, no clear and reasonable warning was  
14 provided to consumers when the Product was manufactured and released into the stream of  
15 commerce to warn consumers about the possible exposure to cancer, developmental or reproductive  
16 hazards from Lead or Cadmium when the Product is consumed.  
17

### **NOTICE OF VIOLATION**

18           **24.** At all times relevant to this action, the Defendants have knowingly and intentionally  
19 exposed the users/consumers of the Product to Lead and/or Cadmium by recommending that  
20 consumers ingest the Product without first giving a clear and reasonable warning to such  
21 individuals.  
22

23           **25.** The Defendants have sold the Product to consumers in California at least since  
24 April 27, 2019. The Product continues to be imported, distributed and sold in California without  
25 the requisite warning information. Consumers are exposed to Lead and/or Cadmium when the  
26 Product is ingested.

27           **26.** On or about July 16, 2020, Plaintiff gave notice (“Notice”) of the alleged violations  
28 of *Health & Safety Code §25249.6* for the Product to Defendants, the California Attorney General,  
the District Attorney for each county in California and the City Attorney for San Francisco, San

1 Diego, San Jose, Sacramento and Los Angeles. In compliance with *Health and Safety Code*  
2 §25249.7(d) and 27 C.C.R. Code §25903(b), each Notice included the following information: the  
3 name, address, and telephone number of the noticing party; the name of the alleged violator; the  
4 statute violated; the approximate time period during which violations occurred; and descriptions of  
5 the violations including the chemicals involved, the routes of toxic exposure, and the specific  
6 product or type of product causing the violations.  
7

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

13         **28.** Plaintiff also sent a Certificate of Merit for each Notice to the California Attorney  
14 General, the District Attorneys of every county in California, the City Attorneys of every city in  
15 California with a population greater than 750,000 and to the named Defendants. In compliance with  
16 *Health & Safety Code* § 2521-9.7(d) and 11 C.C.R. § 3101, each Certificate certified that Plaintiffs'  
17 counsel: (1) has consulted with one or more persons with relevant and appropriate experience or  
18 expertise who reviewed facts, studies or other data regarding the exposures to lead alleged in each  
19 Notice; and (2) based on the information obtained through such consultations, believes that there is  
20 a reasonable and meritorious case for a citizen enforcement action based on the facts alleged in  
21 each Notice.  
22

23         **29.** In reliance on the expert's evaluation of the Product, Plaintiffs' counsel is informed  
24 and believes and thereon alleges that there is a reasonable and meritorious case against Defendants  
25 for this private action.

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





1 from receiving a consumer service.” *Cal. Code Regs. Tit.27 § 25602 (b)*. Frozen Squid is a  
2 consumer product, and as mentioned herein, exposures to Lead and Cadmium took place as a result  
3 of such normal and foreseeable consumption and use.

4           **39.** Plaintiff is informed, believes, and thereon alleges that at least since July 13, 2020  
5 and the present, each of the Defendants knowingly and intentionally exposed California consumers  
6 and users of Frozen Squid to Lead and Cadmium. Plaintiff is informed, believes, and thereon  
7 alleges that Defendants manufactured, distributed, or sold the product Frozen Squid, without first  
8 providing any type of clear and reasonable warning of such to the exposed persons before the time  
9 of exposure. Defendants know and intend that California consumers will use and consume Frozen  
10 Squid, thereby exposing them to Lead and Cadmium. Therefore, Defendants violated Proposition  
11 65.  
12

13           **40.** The primary exposure to the Lead and Cadmium found in Frozen Squid comes from  
14 dermal contact, as well as direct and indirect ingestion and inhalation of the product. Persons  
15 sustain exposures by eating and consuming Frozen Squid and handling Frozen Squid without  
16 wearing gloves or any other personal equipment, or by touching bare skin or mucus membrane with  
17 after handling Frozen Squid, as well as through direct and indirect hand to mouth contact, hand to  
18 mucous membrane, or breathing in particulate matter dispersed from Frozen Squid.  
19

20           **41.** Plaintiff is informed, believes and thereon alleges that each of the Defendant’s  
21 violations of Proposition 65 as to Frozen Squid has been ongoing and continuous, as Defendants  
22 engaged and continue to engage in conduct which violates *Health and Safety Code § 25249.6*,  
23 including the manufacture, distribution, promotion and sale of Frozen Squid, so that a separate and  
24 distinct violation of Proposition 65 occurs each time a person is exposed to Lead and Cadmium by  
25 Frozen Squid as mentioned herein.  
26

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

