

1 Brian Park (SBN: 248994)  
Aida Poulsen (SBN: 333117)  
2 POULSEN LAW P.C.  
282 11<sup>th</sup> Avenue, Suite 2612  
3 New York, New York 10001  
Tel: +1 (646) 776 5999  
4 Tel: +1 (626) 888 1906 Direct  
Email: contact@poulsenlaw.org

5 Attorneys for Plaintiff  
6 The Chemical Toxin Working Group Inc. doing  
business as Healthy Living Foundation Inc.

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
8 **COUNTY OF ALAMEDA**

9  
10 THE CHEMICAL TOXIN WORKING  
GROUP INC., a California non-profit  
11 corporation, doing business as HEALTHY  
LIVING FOUNDATION INC.

12 Plaintiff,

13 vs.

14 BRISTOL FARMS, a California corporation;  
15 INSTACART, an unknown corporate entity;  
INSTACART INC., a Delaware corporation;  
16 MAPLEBEAR, a Delaware corporation; and  
DOES 1-60,

17 Defendants.

CASE NO.

**COMPLAINT FOR INJUNCTIVE  
RELIEF, CIVIL PENALTIES, AND  
OTHER RELIEF UNDER HEALTH  
AND SAFETY CODE SECTION 25249.5,  
et seq  
(PROPOSITION 65)**

18  
19 Plaintiff The Chemical Toxin Working Group Inc. doing business as Healthy Living  
Foundation Inc. (“Plaintiff” or “HLF”) hereby alleges the following on information and belief:

20 **INTRODUCTION**

21 1. This action seeks injunctive and declaratory relief and civil penalties to remedy  
22 the continuing failure of defendants BRISTOL FARMS, INSTACART, INSTACART, INC.,  
23 MAPLEBEAR and DOES 1-60 to warn consumers in California that they are being exposed to  
24

1 Lead, a chemical known to the State of California to cause cancer and reproductive toxicity and  
2 Cadmium, a chemical known to the State of California to cause reproductive toxicity found in (1)  
3 Blue Point Oysters from United States by Bristol Farms Blue Point Oyster, UPC 208654023882  
4 (“Oysters”), (2) Littleneck Clams from United States by Bristol Farms Littleneck Clams, UPC  
5 208155109399 (“Clams”), and (3) Black Mussels from United States by Bristol Farms Black  
6 Mussels, UPC 208095108797 (“Mussels”), (together “Products”).

7 2. This action is brought in the public interest and is based on The Safe Drinking  
8 Water and Toxic Enforcement Act of 1986 (Health and Safety Code § 25249.6 et seq.) also  
9 known as “Proposition 65.” This statute mandates that any person in the course of doing business  
10 must provide a clear and reasonable warning prior to exposing any individual to a chemical  
11 known to the state to cause cancer, birth defects or other reproductive harm.

### 12 PARTIES

13 3. HLF is a non-profit consumer health organization that: implements measures to  
14 reduce the amount of chemical toxins in foods posing targeted dangers to fetuses, children,  
15 pregnant women and women of childbearing age; improves safety for workers by reducing their  
16 exposure to chemicals; publishes consumer health periodicals, books, and comparative test  
17 results. HLF’s Chief Officer David W. Steinman is a publisher, a health journalist and a  
18 bestselling author of *Diet For A Poisoned Planet* (Crown Ed., 1990, Ballantine 2d Ed., 1992,  
19 Running Press 3d Ed., 2007); among his other books are: *The Safe Shopper’s Bible* (Macmillan  
20 Ed., 1995, Wiley 2d Ed., 2000), *The Breast Cancer Prevention Program* (Macmillan Ed., 1997).  
21 Mr. Steinman represented the public interest at the National Academy of Sciences on the Safe  
22 Seafood Committee that produced *Seafood Safety* (Washington, D.C.: National Academies  
23 Press, 1991), advised Congress on related legislation, and has testified before Congress as an  
24 expert witness on food safety.

1 4. HLF is a person within the meaning of Health and Safety Code section 25249.11,  
2 subdivision (a). HLF, acting as a private attorney general, brings this action in the public interest  
3 as defined under Health and Safety Code section 25249.7, subdivision (d).

4 5. BRISTOL FARMS (“BRISTOL”) is a California corporation, doing business in  
5 the State of California at all relevant times herein.

6 6. INSTACART (“INSTACART”) is an unknown corporate entity, doing business  
7 in the State of California at all relevant times herein.

8 7. INSTACART INC. (“INSTACART INC.”) is a Delaware corporation, doing  
9 business in the State of California at all relevant times herein.

10 8. MAPLEBEAR INC. (“MAPLEBEAR”) is a Delaware corporation, doing  
11 business in the State of California at all relevant times herein.

12 9. Plaintiff is presently unaware of the true names and capacities of defendants  
13 DOES 1-60, and therefore sues these defendants by such fictitious names. Plaintiff will amend  
14 this complaint to allege their true names and capacities when ascertained. Plaintiff is informed,  
15 believes, and thereon alleges that each fictitiously named defendant is responsible in some  
16 manner for the occurrences herein alleged and the violations caused thereby. DOES 1-60 are  
17 each a person in the course of doing business within the meaning of Health and Safety Code §§  
18 25249.6 and 25249.11.

19 10. At all times mentioned herein, the term “Defendants” includes BRISTOL,  
20 INSTACART, INSTACART INC., MAPLEBEAR and DOES 1-60.

21 11. Defendants employ ten or more persons and have employed ten or more persons  
22 at all times relevant to this action, and are each a person in the course of doing business within  
23 the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

24 //

1 **JURISDICTION AND VENUE**

2 12. This Court has jurisdiction pursuant to California Constitution Article VI, Section  
3 10, which grants the Superior Court original jurisdiction in all causes except those given by  
4 statute to other trial courts. The statute under which this action is brought does not specify any  
5 other basis for jurisdiction.

6 13. This Court has jurisdiction over this action pursuant to Health and Safety Code  
7 section 25249.7, which allows enforcement of violations of Proposition 65 in any Court of  
8 competent jurisdiction.

9 14. This Court has jurisdiction over Defendants because Defendants either reside or  
10 are located in this State or are foreign corporations authorized to do business in California, are  
11 registered with the California Secretary of State, or Defendants have sufficient minimum  
12 contacts with California, and otherwise intentionally avails itself of the California market  
13 through the marketing, distribution, and/or sale of Products in the State of California, so as to  
14 render the exercise of jurisdiction over Defendants by the California courts consistent with  
15 traditional notions of fair play and substantial justice.

16 15. Venue is proper in the Los Angeles Superior Court because the cause of action  
17 arises out of violations in the County of Los Angeles and/or because Defendants conducted, and  
18 continue to conduct, business in the County of Los Angeles with respect to the consumer  
19 products that are the subject of this action.

20 16. Plaintiffs seek injunctive and declaratory relief and civil penalties from  
21 Defendants' violations of the prohibitions of Proposition 65 (Health and Safety Code § 25249.5  
22 et seq.)

23 **STATUTORY BACKGROUND**

24 17. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative

1 statute passed as “Proposition 65” by close to a two-to-one voting margin. Proposition 65 is  
2 referred to as a “right-to-know” law intended to inform consumers of the potential for exposure  
3 to toxic chemicals and thereby empower them with the information needed to avoid the  
4 exposure.

5 18. Proposition 65 requires that individuals be provided with a “clear and reasonable  
6 warning” before being exposed to substances listed by the State of California as causing cancer  
7 or reproductive toxicity. The warning requirement of Proposition 65 is contained in Health &  
8 Safety Code § 25249.6, which provides,

9 No person in the course of doing business shall knowingly and intentionally  
10 expose any individual to a chemical known to the state to cause cancer or  
11 reproductive toxicity without first giving clear and reasonable warning to such  
individual....

12 19. In this case, the exposures are caused by consumer products. “Consumer  
13 product” means any article, or component part thereof, including food, that is produced,  
14 distributed, or sold for the personal use, consumption or enjoyment of a consumer. (27  
15 California Code of Regulations § 25600.1(d)) “Consumer product exposure” means an exposure  
16 that results from a person's acquisition, purchase, storage, consumption, or any reasonably  
17 foreseeable use of a consumer product, including consumption of a food. (27 California Code of  
18 Regulations § 25600.1(e)).

19 20. Proposition 65 requires the State to publish a list of chemicals known to cause  
20 cancer or birth defects or other reproductive harm (Health and Safety Code §25249.8.) This list  
21 now comprises over 800 chemicals.

22 21. Proposition 65 establishes a procedure by which the State is to develop a list of  
23 chemicals “known to the State to cause cancer or reproductive toxicity.” (Health & Safety, §  
24 25249.8.)

1           22.     Lead and lead compounds (“Lead”) were listed as chemicals known to the State  
2 of California to cause reproductive toxicity on February 27, 1987. Lead became subject to the  
3 warning requirement one year later and was therefore subject to the “clear and reasonable”  
4 warning requirements of Proposition 65 beginning on February 27, 1988. (27 California Code of  
5 Regulations § 25000, *et seq.*; Health & Safety Code § 25249.5, *et seq.*). Due to the toxicity of  
6 lead, the maximum allowable dose level is 0.5 micrograms a day. (27 California Code of  
7 Regulations § 25805(b).) As a point of reference, one microgram is equal to one millionth of a  
8 gram (1 microgram = 1/1,000,000 gram).

9           23.     Lead and lead compounds were listed as chemicals known to the State of  
10 California to cause cancer on October 1, 1992. Lead became subject to the warning requirement  
11 one year later and was therefore subject to the “clear and reasonable” warning requirements of  
12 Proposition 65 beginning on October 1, 1993. (27 California Code of Regulations § 25000, *et*  
13 *seq.*; Health & Safety Code §25249.5, *et seq.*). Due to the carcinogenicity of lead and lead  
14 compounds, the no significant risk level for lead is 15 micrograms a day. (27 California Code of  
15 Regulations § 25705(b)(1).)

16           24.     Cadmium was listed as a chemical known to the State of California to cause  
17 reproductive toxicity on May 1, 1997. Cadmium became subject to the warning requirement one  
18 year later and was therefore subject to the “clear and reasonable” warning requirements of  
19 Proposition 65 beginning on May 1, 1998. (27 California Code of Regulations § 25000, *et seq.*;  
20 Health & Safety Code § 25249.5, *et seq.*). Due to the toxicity of Cadmium, the maximum  
21 allowable dose level is 4.1 micrograms a day. (27 California Code of Regulations § 25805(b).)  
22 As a point of reference, one microgram is equal to one millionth of a gram (1 microgram =  
23 1/1,000,000 gram).

24           25.     Proposition 65 provides that any “person who violates or threatens to violate” the  
25

1 statute “may be enjoined in a court of competent jurisdiction.” (Health & Safety Code §  
2 25249.7). Violators are liable for civil penalties of up to \$2,500 per day for each violation of the  
3 Act. (Health & Safety Code §25249.7(b)(1).)

4 26. Violations of Proposition 65 may be enforced by any person in the public interest,  
5 after providing a 60-day notice of the violations of the Attorney General, appropriate District  
6 Attorneys and City Attorneys and the alleged violator. (Health and Safety Code § 25249.7(d)(1).)  
7 Remedies include injunctive relief to prevent actual or threatened violations, and penalties up to  
8 \$2,500 per day per violation. (Health and Safety Code §25249.7(a) and (b).)

9 27. Proposition 65 may be enforced by any person who provides notice sixty days  
10 before filing suit to both the violator and designated law enforcement officials. When the law  
11 enforcement officials do not file a timely Complaint, this enables a citizen suit to be filed  
12 pursuant to Health & Safety Code section 25249.7, subdivisions (c) and (d).

13 **FACTUAL BACKGROUND**

14 28. Defendants are businesses that develop, manufacture, package, distribute, market,  
15 offer for sale and/or sell the Products in the State of California.

16 29. Plaintiff hired a well-respected and accredited testing laboratory to test  
17 Defendant’s Products for Lead. The results of the testing show that the Products contain Lead.

18 30. Plaintiff hired a well-respected and accredited testing laboratory to test  
19 Defendant’s Products for Cadmium. The results of the testing show that the Products contain  
20 Cadmium.

21 31. Individuals are exposed to the Lead and Cadmium from the reasonable anticipated  
22 use of the Products or when they ingest the Products.

23 32. The Products continue to be offered for sale, sold and/or otherwise made available  
24 for use and/or handling to persons in California.

1 33. At all times relevant to this action, Defendants, therefore, have knowingly and  
2 intentionally exposed the users of the Products to Lead and Cadmium without first giving a clear  
3 and reasonable warning to such individuals. The Products continue to be distributed and sold in  
4 California without providing the requisite warning, and thus the violations are ongoing and  
5 continuous and will continue to occur into the future.

6 34. As a proximate result of acts by Defendants, persons in the course of doing  
7 business within the meaning of Health & Safety Code § 25249.11(b), individuals throughout the  
8 State of California, including in the County of Los Angeles, have been exposed to Lead and  
9 Cadmium without a clear and reasonable warning.

10 **SATISFACTION OF 60 DAY NOTICE**

11 35. On September 23, 2022, Plaintiff served Defendants and each appropriate public  
12 enforcement agency with a Proposition 65 Notice, a document entitled “Sixty-Day Notice of  
13 Intent to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986”  
14 (“Notice of Violation”) that provided Defendants and the public enforcement agency with notice  
15 that Defendants were in violation of Proposition 65 for failing to warn purchasers and consumers  
16 of the Products that ingestion of the Products exposes them to Lead and Cadmium, a chemical  
17 known to the State of California to cause cancer and reproductive toxicity. The Notice of  
18 Violation is designated with Attorney General number 2022-02277. The Notice of Violation  
19 constitutes adequate notice to Defendants because it provided adequate information to allow  
20 Defendants to assess the nature of the alleged violations. A certificate of merit and a certificate  
21 of service accompanied the Notice of Violation, and both certificates comply with Proposition 65  
22 and its implementing regulations. A true and correct copy of the Notice of Violation is attached  
23 here as Exhibit A and is incorporated herein by reference.

24 36. More than 60 days have passed since Plaintiff served the Notice of Violation and



1 no public enforcement entity has filed a Complaint in this case.

2 37. Plaintiff is commencing this action more than sixty (60) days from the date that  
3 Plaintiff served the Notice of Violation on the Defendants and the public prosecutors referenced  
4 in the paragraphs above.

5 38. Plaintiff is informed, believes, and thereon alleges that neither the Attorney  
6 General, nor any applicable district attorney or city attorney has commenced an action or is  
7 diligently prosecuting an action against either of the Defendants.

8 **FIRST CAUSE OF ACTION**

9 **(Violation of Health & Safety Code § 25249.6, Failure to Provide Clear and Reasonable  
10 Warning under Proposition 65 – Against ALL DEFENDANTS and DOES 1-10)**

11 39. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 38,  
12 inclusive, as if superficially set forth herein.

13 40. By committing the acts alleged above, Defendants have, in the course of doing  
14 business, knowingly and intentionally exposed users of the Oysters to Lead without first giving  
15 clear and reasonable warning to such individuals within the meaning of Health & Safety Code §  
16 25249.6 and continue to violate the statute as the Oysters continue to make its way to individuals  
17 in California through the chain of commerce.

18 41. Said violations render Defendants liable for civil penalties, up to \$2,500 per day  
19 for each violation, and subject Defendants to injunction.

20 **SECOND CAUSE OF ACTION**

21 **(Violation of Health & Safety Code § 25249.6, Failure to Provide Clear and Reasonable  
22 Warning under Proposition 65 – Against ALL DEFENDANTS and DOES 11-20)**

23 42. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 41,  
24 inclusive, as if superficially set forth herein.

1 43. By committing the acts alleged above, Defendants have, in the course of doing  
2 business, knowingly and intentionally exposed users of the Oysters to Cadmium without first  
3 giving clear and reasonable warning to such individuals within the meaning of Health & Safety  
4 Code § 25249.6 and continue to violate the statute as the Oysters continue to make its way to  
5 individuals in California through the chain of commerce.

6 44. Said violations render Defendants liable for civil penalties, up to \$2,500 per day  
7 for each violation, and subject Defendants to injunction.

8 **THIRD CAUSE OF ACTION**

9 **(Violation of Health & Safety Code § 25249.6, Failure to Provide Clear and Reasonable**  
10 **Warning under Proposition 65 – Against ALL DEFENDANTS and DOES 21-30)**

11 45. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 44,  
12 inclusive, as if superficially set forth herein.

13 46. By committing the acts alleged above, Defendants have, in the course of doing  
14 business, knowingly and intentionally exposed users of the Clams to Lead without first giving  
15 clear and reasonable warning to such individuals within the meaning of Health & Safety Code §  
16 25249.6 and continue to violate the statute as the Clams continue to make its way to individuals  
17 in California through the chain of commerce.

18 47. Said violations render Defendants liable for civil penalties, up to \$2,500 per day  
19 for each violation, and subject Defendants to injunction.

20 **FOURTH CAUSE OF ACTION**

21 **(Violation of Health & Safety Code § 25249.6, Failure to Provide Clear and Reasonable**  
22 **Warning under Proposition 65 – Against ALL DEFENDANTS and DOES 31-40)**

23 48. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 47,  
24 inclusive, as if superficially set forth herein.

1 49. By committing the acts alleged above, Defendants have, in the course of doing  
2 business, knowingly and intentionally exposed users of the Clams to Cadmium without first  
3 giving clear and reasonable warning to such individuals within the meaning of Health & Safety  
4 Code § 25249.6 and continue to violate the statute as the Clams continue to make its way to  
5 individuals in California through the chain of commerce.

6 50. Said violations render Defendants liable for civil penalties, up to \$2,500 per day  
7 for each violation, and subject Defendants to injunction.

8 **FIFTH CAUSE OF ACTION**

9 **(Violation of Health & Safety Code § 25249.6, Failure to Provide Clear and Reasonable**  
10 **Warning under Proposition 65 – Against ALL DEFENDANTS and DOES 41-50)**

11 51. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 50,  
12 inclusive, as if superficially set forth herein.

13 52. By committing the acts alleged above, Defendants have, in the course of doing  
14 business, knowingly and intentionally exposed users of the Mussels to Lead without first giving  
15 clear and reasonable warning to such individuals within the meaning of Health & Safety Code §  
16 25249.6 and continue to violate the statute as the Mussels continue to make its way to  
17 individuals in California through the chain of commerce.

18 53. Said violations render Defendants liable for civil penalties, up to \$2,500 per day  
19 for each violation, and subject Defendants to injunction.

20 **SIXTH CAUSE OF ACTION**

21 **(Violation of Health & Safety Code § 25249.6, Failure to Provide Clear and Reasonable**  
22 **Warning under Proposition 65 – Against ALL DEFENDANTS and DOES 51-60)**

23 54. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 53,  
24 inclusive, as if superficially set forth herein.

1 55. By committing the acts alleged above, Defendants have, in the course of doing  
2 business, knowingly and intentionally exposed users of the Mussels to Cadmium without first  
3 giving clear and reasonable warning to such individuals within the meaning of Health & Safety  
4 Code § 25249.6 and continue to violate the statute as the Black Mussels from United States by  
5 Bristol Farm Black Mussels, UPC continue to make its way to individuals in California through  
6 the chain of commerce.

7 56. Said violations render Defendants liable for civil penalties, up to \$2,500 per day  
8 for each violation, and subject Defendants to injunction.

9 **PRAYER**

10 Wherefore, Plaintiff accordingly prays for the following relief:

11 57. An assessment of civil penalties pursuant to Health & Safety Code § 25249.7(b),  
12 against Defendants in the amount of \$2,500 per day for each violation of Proposition 65;

13 58. An injunctive order, pursuant to Health & Safety Code § 25249.7(a), for such  
14 temporary restraining orders, preliminary and permanent injunctive orders as are necessary to  
15 prevent Defendants from exposing individuals to Lead and Cadmium without providing a clear  
16 and reasonable warning for the Products;

17 59. On all Causes of Action, an award to Plaintiff of its reasonable attorneys' fees and  
18 costs;

19 60. For such other relief as the Court may deem just and proper.

20 //

21 //

22 //

23 //

24 //

1 DATED: September 1, 2023

POULSEN LAW P.C.

2  
3 

4 

---

 Brian Park  
5 Attorney for Plaintiff  
6 The Chemical Toxin Working Group Inc. doing  
7 business as Healthy Living Foundation Inc.  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

# EXHIBIT A



**VIA CERTIFIED FIRST CLASS MAIL**

Adam Caldecott, or current President or  
CEO  
Bristol Farms  
915 East 230th Street  
Carson, CA 90745

Adam Caldecott, or current President or  
CEO  
Bristol Farms  
c/o CSC-Lawyers Incorporating Service  
2710 Gateway Oaks Drive, Suite 150N  
Sacramento, CA 95833

Fedji Simo, or current President or CEO  
Instacart  
c/o C T Corporation System  
330 North Brand Blvd., Suite 700  
Glendale, CA 92103

Fedji Simo, or current President or CEO  
Instacart  
50 Beale Street, Suite 600  
San Francisco, CA 94105

Fedji Simo, or current President or CEO  
Instacart Inc.  
c/o Corporation Service Company (Agent)  
251 Little Falls Drive  
Wilmington, DE 19808

Current President or CEO  
Maplebear Inc.  
c/o The Corporation Trust Company  
Corporation Trust Center 1209 Orange St.  
Wilmington, DE 19801

**VIA ELECTRONIC FILING**

State of California Department of Justice  
Office of Attorney General of California  
Filing link: [oag.ca.gov/prop65](http://oag.ca.gov/prop65)

**VIA FIRST CLASS MAIL**

District Attorneys of California Counties  
and City Attorneys, as in the Certificate of  
Service

**VIA E-MAIL**

District Attorneys of California Counties  
and City Attorneys, as in the Certificate of  
Service

RE: Cadmium, Lead and Bristol Farms, Instacart, Instacart Inc., and Maplebear Inc. products  
lead compounds in

September 23, 2022

60-DAY NOTICE OF INTENT TO SUE

*for violations of the Safe Drinking Water and Toxic Enforcement Act of 1986*

Dear alleged violators and public enforcement agencies,

Poulsen Law P.C. represents The Chemical Toxin Working Group, Inc., a California non-profit corporation, doing business as Healthy Living Foundation Inc. (“HLF,” “Noticing Party”), a non-profit consumer health organization engaged in supporting public health, implementing measures reducing the amount of chemical toxins in consumer products, improvement of worker and consumer safety from chemical exposures. as well as publishing comparative results of testing foods and consumer products and educating the public.

HLF has enforced a large number of Cal. Health & Safety Code violations in the public interest and developed an extensive expertise in prosecuting manufacturers and distributors of food and consumer products for violations of health laws and consumer safety. These cases have resulted in significant public benefit, including reformulation of products to remove toxic chemicals to make them safer, and putting label warnings on products tested as contaminated with lead, cadmium, acrylamide, dioxane, or removing them from the California market.

HLF’s Chief Officer David Steinman is a journalist, a publisher and an author of a bestseller *Diet For A Poisoned Planet* (Crown ed., 1990, Ballantine 2d ed., 1992, Running Press 3d ed., 2007); his major books also include *The Safe Shopper’s Bible* (Macmillan ed., 1995, Wiley 2d ed., 2000), *The Breast Cancer Prevention Program* (Macmillan ed., 1997), *Living Healthy In A Toxic World* (Perseus ed., 1996), *Safe Trip To Eden: Ten Steps To Save The Planet Earth From The Global Warming Meltdown* (Running Press ed., 2007), along with many publications in periodicals and other media.

The Safe Drinking Water and Toxic Enforcement Act of 1986, codified in the California Health & Safety Code sections 25249.5, et seq. (“Proposition 65”), requires that a 60-day notice of intent to sue be provided to a violator of Cal. Health & Safety Code § 25249.6.

With this notice of violation (Notice), HLF gives a written notice of the alleged violation, bringing this action in the public interest as defined under the Cal. Health & Safety Code § 25249.7(d), seeking to prosecute the alleged continuing noncompliance and to warn consumers about their exposure to the violative chemical(s), or reduce and/or eliminate consumer exposures from product(s) (collectively, the “Specified Products” and each a “Specified Product”) listed in the table below, which are manufactured, distributed and/or sold by Bristol Farms, Instacart, Instacart Inc., and Maplebear, Inc. (referred to collectively as the “Noticed Parties”).



This Notice covers the violations of Proposition 65 that are currently known to the Noticing Party from information now available as specifically related to the violating products listed below and manufactured, distributed or/and sold by and through the Noticed Parties. HLF is continuing its investigation that may reveal further violations.

The Specified Product(s) subject to this Notice, the chemical(s) in the Specified Product(s) identified as exceeding allowable levels, and the Noticed Parties responsible for sales of the Specified Products, are as follows:

<b>Specified Products</b>	<b>Violative chemical</b>	<b>Noticed Party</b>
Bristol Farms Blue Point Oyster, UPC: 208654023882	Cadmium, Lead and lead compounds	Bristol Farms, Instacart, Instacart Inc., and Maplebear Inc.
Bristol Farms Littleneck Clams, UPC: 208155109399	Cadmium, Lead and lead compounds	Bristol Farms, Instacart, Instacart Inc., and Maplebear Inc.
Bristol Farms Black Mussels, UPC: 208095108797	Cadmium, Lead and lead compounds	Bristol Farms, Instacart, Instacart Inc., and Maplebear Inc.

The primary route of exposure has been through ingestion.

Noticed Parties have manufactured, marketed, distributed and/or sold the Specified Product which, according to the test results, have exposed and continue to expose consumers within the State of California to cadmium and lead.

Cadmium is listed pursuant to Proposition 65 as a chemical known to the State of California to cause developmental toxicity, reproductive toxicity and cancer.

Lead and lead compounds (“lead”) is listed pursuant to Proposition 65 as a chemical known to the State of California to cause developmental toxicity, reproductive toxicity and cancer.

Cal. Health & Safety Code § 25249.6 requires that a “clear and reasonable” warning be provided prior to exposure to chemicals listed under Proposition 65. The Noticed Parties are in violation of Proposition 65 because the Noticed Parties have failed to provide a warning to consumers that they are being exposed to cadmium and lead. While in the course of doing business, the Noticed Parties are knowingly and intentionally exposing consumers to cadmium and lead without first providing a “clear and reasonable” warning.

The method of warning should be a warning that appears on the product’s label. See Cal. Code Regs. tit. 27, § 25602, subd. (a)(3), and subd. (b) for internet purchases also at the point of sale, as applicable. The Noticed Parties have not provided any Proposition 65 warnings as required by law or any other appropriate warnings that persons handling, ingesting and/or otherwise using the Specified Product are being exposed to cadmium and lead.

With respect to the Specified Product listed above, the violation commenced on the latter of the date that the Specified Product was first offered for sale in California or the date upon which California law codified the allowable level of the relevant chemical; has continued every day since the relevant date the violation commenced; and will continue every day henceforth until cadmium and lead are removed from the Specified Product, reduced to allowable levels, or until a “clear and reasonable” warning is provided to consumers by the Noticed Parties, as applicable, in accordance with the law.

Pursuant to Title 27, C.C.R. § 25903(b), copies of the following documents are attached hereto for reference by the Notices Parties:

(i) “The Safe Drinking Water and Toxic Enforcement act of 1986 (Proposition 65): A Summary.”

Pursuant to Title 11, C.C.R. § 3100, the “Certificate of Merit” is attached hereto.

HLF intends to file a lawsuit after 60 days based on the facts set forth in this Notice. Meanwhile we encourage a prompt resolution of this matter within the said period of 60 days where the Noticed Parties agree in a written agreement to (1) eliminate or reduce cadmium and lead to an allowable level in the Specified Products or, as an alternative, (2) provide a Proposition 65- compliant warning on the label of the Specified Products and at the point of sale; and (3) pay applicable civil penalties and costs of bringing this action.

Prompt action of the Noticed Parties on this Notice will prevent further consumer exposures to a dangerous chemical without warning, therefore rectifying these alleged ongoing violations of the California law and afford the Noticed Parties the opportunity to avoid increasing costs associated with incompliance and costly litigation.

Please direct all communications regarding this Notice to this office.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Aida Poulsen', with a stylized flourish at the end.

Aida Poulsen | Managing attorney | NY | CA  
contact@poulsenlaw.org

## **ATTACHMENTS**

1. Certificate of Merit;
2. Confidential Factual Information supporting Certificate of Merit (to Attorney General only);
3. Certificate of Service;
4. Appendix "A" - "The Safe Drinking Water and Toxic Enforcement act of 1986 (Proposition 65): A Summary" (to the Noticed Parties only).



To:	California Attorney General
Notice of Violation:	September 23, 2022
Noticing Party:	Chemical Toxin Working Group Inc. dba Healthy Living Foundation Inc.
Noticed Parties:	Bristol Farms, Instacart, Instacart Inc., and Maplebear Inc.

September 23, 2022

**CERTIFICATE OF MERIT**

**Health and Safety Code Section 25249.7(d)**

*To the Notice of Violation*

I, Aida Poulsen, attorney at law, hereby declare:

This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the parties identified in the notices have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.

I am the attorney for the Noticing Party.

I have reviewed the facts of this case and have consulted with one or more persons with relevant and appropriate experience and expertise who have reviewed facts, studies, and/or other data regarding the alleged exposures to the listed chemical that is the subject of the attached Notice of Violation dated September 23, 2022 (the "Notice").

I have reviewed the laboratory testing results for the chemical subject to the Notice and rely on these results. The testing was conducted by a reputable accredited testing laboratory and by experienced scientists with doctoral and other degrees in relevant sciences. The facts, studies and other data derived through this investigation overwhelmingly demonstrate that the alleged violators have exposed persons to the listed chemical that is the subject of the Notice and is known to the State of California to cause reproductive and/or developmental harm, and/or cancer.

Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.

www.PoulsenLaw.org

282 11<sup>th</sup> Avenue, Suite 2612  
New York, New York 10001



Page 7 of 14

+1 650 296 1014

contact@PoulsenLaw.org

The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: September 23, 2022

By:

A handwritten signature in blue ink, appearing to read 'Aida Poulsen'.

Aida Poulsen | Managing attorney | NY | CA  
contact@poulsenlaw.org



## Appendix A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986  
(PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as “Proposition 65”). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

### *WHAT DOES PROPOSITION 65 REQUIRE?*

**The “Proposition 65 List.”** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

**Clear and reasonable warnings.** A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

**Prohibition from discharges into drinking water.** A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

*DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?*

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

***Grace Period.*** Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

***Governmental agencies and public water utilities.*** All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

***Businesses with nine or fewer employees.*** Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

***Exposures that pose no significant risk of cancer.*** For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific “No Significant Risk Levels” (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA’s website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

***Exposures that will produce no observable reproductive effect at 1,000 times the level in question.*** For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level” divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA’s website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

***Exposures to Naturally Occurring Chemicals in Food.*** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

***Discharges that do not result in a “significant amount” of the listed chemical entering any source of drinking water.*** The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” level for chemicals that cause cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

*HOW IS PROPOSITION 65 ENFORCED?*

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off- premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles. If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at: <http://oehha.ca.gov/prop65/law/p65law72003.html>.

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS. . .*

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at [P65Public.Comments@oehha.ca.gov](mailto:P65Public.Comments@oehha.ca.gov).

Revised: May 2017





CERTIFICATE OF SERVICE

I, Jonathan Newell, am over the age of eighteen years and am not a party to the action, process or case related to or arising out of the Notice of Violation being served under this Certificate of Service. My address is 18653 Ventura Blvd., Ste. 136, Tarzana, CA 91356.

On September 23, 2022, between 11:00 a.m. and 5:00 p.m. Pacific Time, I served the following documents:

1. Notice of Violations of California Health & Safety Code Section 25249.5 et seq. by Bristol Farms, Instacart, Instacart Inc., and Maplebear Inc.;
2. Certificate of Merit;
3. Appendix “A” - “The Safe Drinking Water and Toxic Enforcement act of 1986 (Proposition 65): A Summary;”

on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the parties below, and causing it to be deposited at a United States Postal Service Office in Los Angeles County, California, for delivery by Certified Mail:

Adam Caldecott, or current President or CEO Bristol Farms 915 East 230th Street Carson, CA 90745	Fedji Simo, or current President or CEO Instacart 50 Beale Street, Suite 600 San Francisco, CA 94105
Adam Caldecott, or current President or CEO Bristol Farms c/o CSC-Lawyers Incorporating Service 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833	Fedji Simo, or current President or CEO Instacart Inc. c/o Corporation Service Company (Agent) 251 Little Falls Drive Wilmington, DE 19808
Fedji Simo, or current President or CEO Instacart c/o C T Corporation System 330 North Brand Blvd., Suite 700 Glendale, CA 92103	Current President or CEO Maplebear Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange St. Wilmington, DE 19801

On September 23, 2022, between 11:00 a.m. and 11:30 p.m. Pacific Time, I served the following documents:

1. Notice of Violations of California Health & Safety Code Section 25249.5 et seq. by Bristol Farms, Instacart, Instacart Inc., and Maplebear Inc.;
2. Certificate of Merit;
3. Confidential Factual Information and Supporting Documentation Required by Title 11, C.C.R. § 3102



on the following parties by filing electronically a true and correct copy thereof as permitted through the website of the California Office of the Attorney General via link at [oag.ca.gov/prop65](http://oag.ca.gov/prop65):

State of California Department of Justice;  
Office of the Attorney General of California.

On September 23, 2022, between 11:00 a.m. and 5:00 p.m. Pacific Time, I served the following documents:

1. Notice of Violations of California Health & Safety Code Section 25249.5 et seq. by Bristol Farms, Instacart, Instacart Inc., and Maplebear Inc.;
2. Certificate of Merit

on the following parties below by placing a true and correct copy thereof in a sealed envelope, addressed to each of the District Attorney and City Attorney offices listed below, and causing each envelope to be deposited at a United States Postal Service mail box for delivery by First Class Mail:

District Attorney Alpine County PO Box 248 Markleeville, CA 96120	District Attorney Lake County 255 North Forbes Street Lakeport, CA 95453	District Attorney Sierra County PO Box 457 Downieville, CA 95936
District Attorney Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney Los Angeles County Hall of Justice 211 West Temple St. Ste 1200 Los Angeles, CA 90012	District Attorney's Office Siskiyou County Courthouse 311 Fourth Street, Room 204 Yreka, CA 96097
District Attorney Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533
District Attorney Colusa County 310 6 <sup>th</sup> Street Colusa, CA 95932	District Attorney Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354
District Attorney Del Norte County 450 H Street, Suite 171 Crescent City, CA 95531	District Attorney Mendocino County PO Box 1000 Ukiah, CA 95482	District Attorney Sutter County 446 Second Street Yuba City, CA 95991
District Attorney EL Dorado County 778 Pacific Street Placerville, CA 95667	District Attorney Modoc County 204 S Court Street, Room 202	District Attorney Tehama County PO Box 519 Red Bluff, CA 96080



	Alturas, CA 96101-4020	
District Attorney Fresno County 2220 Tulare Street Suite 1000 Fresno, CA 93721	District Attorney Orange County 300 N Flower St. Santa Ana, CA 92703	District Attorney Trinity County Post Office Box 310 Weaverville, CA 96093
District Attorney Glenn County Post Office Box 430 Willows, CA 95988	District Attorney San Benito County 419 4 <sup>th</sup> Street Hollister, CA 95023	District Attorney Tuolumne County 423 North Washington St. Sonora, CA 95370
District Attorney Humboldt County 825 5th Street 4 <sup>th</sup> Floor Eureka, CA 95501	District Attorney San Bernardino County 316 No. Mountain View Avenue San Bernardino, CA 92415	District Attorney Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney Imperial County 940 West Main Street, Suite 102 El Centro, CA 92243	District Attorney San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney Shasta County 1355 West Street Redding, CA 96001	San Jose City Attorney's Office 200 East Santa Clara Street, 16 <sup>th</sup> Floor San Jose, CA 95113
District Attorney Kings County 1400 West Lacey Blvd. Hanford, CA 93230	District Attorney Mono County Post Office Box 617 Bridgeport, CA 93517	

On September 23, 2022, between 11:00 a.m. and 11:30 p.m. Pacific Time, I served the following documents:

1. Notice of Violations of California Health & Safety Code Section 25249.5 et seq. by Bristol Farms, Instacart, Instacart Inc., and Maplebear Inc.;
2. Certificate of Merit

on each of the parties below, all of which have requested electronic service only via the following email addresses:

Alameda County District Attorney CEPDProp65@acgov.org	Calaveras County District Attorney Prop65Env@co.calaveras.ca.us
Contra Costa County District Attorney sgrassini@contracostada.org	Inyo County District Attorney inyoda@inyocounty.us



Lassen County District Attorney mlatimer@co.lassen.ca.us	Mariposa County District Attorney mcda@mariposacounty.org
Merced County District Attorney Prop65@countyofmerced.com	Monterey County District Attorney Prop65DA@co.monterey.ca.us
Napa County District Attorney CEPD@countyofnapa.org	Nevada County District Attorney DA.Prop65@co.nevada.ca.us
Placer County District Attorney Prop65@placer.ca.gov	Plumas County District Attorney davidhollister@countyofplumas.com
Riverside County District Attorney Prop65@rivcoda.org	Sacramento County District Attorney Prop65@sacda.org
San Diego City Attorney CityAttyProp65@sandiego.gov	San Diego County District Attorney SanDiegoDAProp65@sdcda.org
San Francisco County District Attorney alethea.sargent@sfgov.org	San Francisco City Attorney Valerie.Lopez@sfcityatty.org
San Joaquin County District Attorney DA DAConsumer.Environmental@sjcda.org	San Luis Obispo County District Attorney edobroth@co.slo.ca.us
Santa Barbara County District Attorney DAProp65@co.santa-barbara.ca.us	Santa Clara County District Attorney EPU@da.sccgov.org
Santa Cruz County District Attorney Prop65DA@santacruzcounty.us	Sonoma County District Attorney jbarnes@sonoma-county.org
Tulare County District Attorney Prop65@co.tulare.ca.us	Ventura County District Attorney daspecialops@ventura.org
Yolo County District Attorney cfepd@yolocounty.org	

I, Jonathan Newell, declare under penalty of perjury that the foregoing is true and correct.

Signature

September 23, 2022

18653 Ventura Blvd., Ste. 136  
Tarzana, CA 91356