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

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF LOS ANGELES**

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

Plaintiff,

vs.

SANTA BARBARA FISH MARKET, INC., a  
California corporation; and DOES 1-100,

Defendants.

CASE NO. **23STCV28296**

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

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:

**INTRODUCTION**

1. This action seeks injunctive and declaratory relief and civil penalties to remedy  
the continuing failure of Defendant, Santa Barbara Fish Market, Inc. ("Defendant") to warn  
consumers in California that they are being exposed to Lead and Cadmium, chemicals known to

1 the State of California to cause cancer and reproductive toxicity found in (1) Santa Barbara Fish  
2 Market California Grassy Bar Oysters (“Bar Oysters”), (2) Santa Barbara Fish Market Littleneck  
3 Clams (“Littleneck Clams”), (3) Santa Barbara Fish Market Manila Clams (“Manila Clams”), (4)  
4 Santa Barbara Fish Market Bluepoint Oysters (“Bluepoint Oysters”), and (5) Santa Barbara Fish  
5 Market Santa Barbara Hope Ranch Mussels (“Mussels”), (with the Bar Oysters, Littleneck  
6 Clams, Manila Clams, Bluepoint Oysters, and Mussels together referred to as the “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  
14 3. HLF is a non-profit consumer health organization that: implements measures to  
15 reduce the amount of chemical toxins in foods posing targeted dangers to fetuses, children,  
16 pregnant women and women of childbearing age; improves safety for workers by reducing their  
17 exposure to chemicals; publishes consumer health periodicals, books, and comparative test  
18 results. HLF’s Chief Officer David W. Steinman is a publisher, a health journalist and a  
19 bestselling author of Diet For A Poisoned Planet (Crown Ed., 1990, Ballantine 2d Ed., 1992,  
20 Running Press 3d Ed., 2007); among his other books are: The Safe Shopper’s Bible (Macmillan  
21 Ed., 1995, Wiley 2d Ed., 2000), The Breast Cancer Prevention Program (Macmillan Ed., 1997).  
22 Mr. Steinman represented the public interest at the National Academy of Sciences on the Safe  
23 Seafood Committee that produced Seafood Safety (Washington, D.C.: National Academies

1 Press, 1991), advised Congress on related legislation, and has testified before Congress as an  
2 expert witness on food safety.

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

6 5. Santa Barbara Fish Market, Inc. is a California corporation, doing business in the  
7 State of California at all relevant times herein.

8 6. Plaintiff is presently unaware of the true names and capacities of defendants  
9 DOES 1-100, and therefore sues these defendants by such fictitious names. Plaintiff will amend  
10 this complaint to allege their true names and capacities when ascertained. Plaintiff is informed,  
11 believes, and thereon alleges that each fictitiously named defendant is responsible in some  
12 manner for the occurrences herein alleged and the violations caused thereby. DOES 1-100 are  
13 each a person in the course of doing business within the meaning of Health and Safety Code §§  
14 25249.6 and 25249.11.

15 7. At all times mentioned herein, the term “Defendants” includes Defendant and  
16 DOES 1-100.

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

20 **JURISDICTION AND VENUE**

21  
22 9. This Court has jurisdiction pursuant to California Constitution Article VI, Section  
23 10, which grants the Superior Court original jurisdiction in all causes except those given by

1 statute to other trial courts. The statute under which this action is brought does not specify any  
2 other basis for jurisdiction.

3 10. This Court has jurisdiction over this action pursuant to Health and Safety Code  
4 section 25249.7, which allows enforcement of violations of Proposition 65 in any Court of  
5 competent jurisdiction.

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

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

17 13. Plaintiffs seek injunctive and declaratory relief and civil penalties from  
18 Defendants' violations of the prohibitions of Proposition 65 (Health and Safety Code § 25249.5  
19 et seq.)

### 20 **STATUTORY BACKGROUND**

21  
22 14. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative  
23 statute passed as "Proposition 65" by close to a two-to-one voting margin. Proposition 65 is

1 referred to as a “right-to-know” law intended to inform consumers of the potential for exposure  
2 to toxic chemicals and thereby empower them with the information needed to avoid the  
3 exposure.

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

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

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

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

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

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

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

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

22. Proposition 65 provides that any “person who violates or threatens to violate” the statute “may be enjoined in a court of competent jurisdiction.” (Health & Safety Code § 25249.7). Violators are liable for civil penalties of up to \$2,500 per day for each violation of the Act. (Health & Safety Code §25249.7(b)(1).)

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

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

### **FACTUAL BACKGROUND**

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

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

27. Individuals are exposed to Lead and Cadmium when they ingest the Products.

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

1           29.     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           30.     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  
12           31.     On May 19, 2023, Plaintiff served Defendant and each appropriate public  
13 enforcement agency with a Proposition 65 Notice, a document entitled “Sixty-Day Notice of  
14 Intent to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986”  
15 (“Notice of Violation”) that provided Defendant and the public enforcement agency with notice  
16 that Defendant was in violation of Proposition 65 for failing to warn purchasers and consumers  
17 of the Product that ingestion of the Products expose them to Lead and Cadmium, chemicals  
18 known to the State of California to cause cancer and reproductive toxicity. The Notice of  
19 Violation is designated with Attorney General number 2023-01408. The Notice of Violation  
20 constitutes adequate notice to Defendant because it provided adequate information to allow  
21 Defendant to assess the nature of the alleged violations. A certificate of merit and a certificate of  
22 service accompanied the Notice of Violation, and both certificates comply with Proposition 65  
23 and its implementing regulations. A true and correct copy of the Notice of Violation is attached



here as Exhibit A and is incorporated herein by reference.

32. More than 60 days have passed since Plaintiff served the Notice of Violation and no public enforcement entity has filed a Complaint in this case.

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

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

**FIRST CAUSE OF ACTION**  
**(Violation of Health & Safety Code § 25249.6, Failure to Provide Clear and Reasonable Warning under Proposition 65 – Against Defendant and DOES 1-10)**

35. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 34 , inclusive, as if superficially set forth herein.

36. By committing the acts alleged above, Defendant and DOES 1-10 have, in the course of doing business, knowingly and intentionally exposed users of the Bar Oysters to Lead, a chemical known to the State of California to cause cancer and reproductive toxicity without first giving clear and reasonable warning to such individuals within the meaning of Health & Safety Code § 25249.6 and continue to violate the statute as the Bar Oysters continue to make its way to individuals in California through the chain of commerce.

37. Said violations render Defendant and DOES 1-10 liable for civil penalties, up to \$2,500 per day for each violation, and subject Defendant and DOES 1-10 to injunction.

**SECOND CAUSE OF ACTION**  
**(Violation of Health & Safety Code § 25249.6, Failure to Provide Clear and Reasonable Warning under Proposition 65 – Against Defendant and DOES 11-20)**

38. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 37 , inclusive, as if superficially set forth herein.

39. By committing the acts alleged above, Defendant and DOES 11-20 have, in the course of doing business, knowingly and intentionally exposed users of the Bar Oysters to Cadmium, a chemical known to the State of California to cause reproductive toxicity without first giving clear and reasonable warning to such individuals within the meaning of Health & Safety Code § 25249.6 and continue to violate the statute as the Bar Oysters continue to make its way to individuals in California through the chain of commerce.

40. Said violations render Defendant and DOES 11-20 liable for civil penalties, up to \$2,500 per day for each violation, and subject Defendant and DOES 11-20 to injunction.

**THIRD CAUSE OF ACTION**  
**(Violation of Health & Safety Code § 25249.6, Failure to Provide Clear and Reasonable  
Warning under Proposition 65 – Against Defendant and DOES 21-30)**

41. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 40 , inclusive, as if superficially set forth herein.

42. By committing the acts alleged above, Defendant and DOES 21-30 have, in the course of doing business, knowingly and intentionally exposed users of the Littleneck Clams to Lead, a chemical known to the State of California to cause cancer and reproductive toxicity without first giving clear and reasonable warning to such individuals within the meaning of Health & Safety Code § 25249.6 and continue to violate the statute as the Littleneck Clams continues to make its way to individuals in California through the chain of commerce.

43. Said violations render Defendant and DOES 21-30 liable for civil penalties, up to \$2,500 per day for each violation, and subject Defendant and DOES 21-30 to injunction.

1  
2  
3 **FOURTH CAUSE OF ACTION**  
4 **(Violation of Health & Safety Code § 25249.6, Failure to Provide Clear and Reasonable**  
5 **Warning under Proposition 65 – Against Defendant and DOES 31-40)**

6 44. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 43 ,  
7 inclusive, as if superficially set forth herein.

8 45. By committing the acts alleged above, Defendant and DOES 31-40 have, in the  
9 course of doing business, knowingly and intentionally exposed users of the Littleneck Clams to  
10 Cadmium, a chemical known to the State of California to cause reproductive toxicity without  
11 first giving clear and reasonable warning to such individuals within the meaning of Health &  
12 Safety Code § 25249.6 and continue to violate the statute as the Littleneck Clams continue to  
13 make its way to individuals in California through the chain of commerce.

14 46. Said violations render Defendant and DOES 31-40 liable for civil penalties, up to  
15 \$2,500 per day for each violation, and subject Defendant and DOES 31-40 to injunction.

16 **FIFTH CAUSE OF ACTION**  
17 **(Violation of Health & Safety Code § 25249.6, Failure to Provide Clear and Reasonable**  
18 **Warning under Proposition 65 – Against Defendant and DOES 41-50)**

19 47. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 46 ,  
20 inclusive, as if superficially set forth herein.

21 48. By committing the acts alleged above, Defendant and DOES 41-50 have, in the  
22 course of doing business, knowingly and intentionally exposed users of the Manila Clams to  
23 Lead, a chemical known to the State of California to cause cancer and reproductive toxicity  
24 without first giving clear and reasonable warning to such individuals within the meaning of  
25 Health & Safety Code § 25249.6 and continue to violate the statute as the Manila Clams

continues to make its way to individuals in California through the chain of commerce.

49. Said violations render Defendant and DOES 41-50 liable for civil penalties, up to \$2,500 per day for each violation, and subject Defendant and DOES 41-50 to injunction.

**SIXTH CAUSE OF ACTION**  
**(Violation of Health & Safety Code § 25249.6, Failure to Provide Clear and Reasonable Warning under Proposition 65 – Against Defendant and DOES 51-60)**

50. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 49 , inclusive, as if superficially set forth herein.

51. By committing the acts alleged above, Defendant and DOES 51-60 have, in the course of doing business, knowingly and intentionally exposed users of the Manila Clams to Cadmium, a chemical known to the State of California to cause reproductive toxicity without first giving clear and reasonable warning to such individuals within the meaning of Health & Safety Code § 25249.6 and continue to violate the statute as the Manila Clams continue to make its way to individuals in California through the chain of commerce.

52. Said violations render Defendant and DOES 51-60 liable for civil penalties, up to \$2,500 per day for each violation, and subject Defendant and DOES 51-60 to injunction.

**SEVENTH CAUSE OF ACTION**  
**(Violation of Health & Safety Code § 25249.6, Failure to Provide Clear and Reasonable Warning under Proposition 65 – Against Defendant and DOES 61-70)**

53. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 52, inclusive, as if superficially set forth herein.

54. By committing the acts alleged above, Defendant and DOES 61-70 have, in the course of doing business, knowingly and intentionally exposed users of the Bluepoint Oysters to Lead, a chemical known to the State of California to cause cancer and reproductive toxicity without first giving clear and reasonable warning to such individuals within the meaning of

1 Health & Safety Code § 25249.6 and continue to violate the statute as the Bluepoint Oysters  
2 continues to make its way to individuals in California through the chain of commerce.

3 55. Said violations render Defendant and DOES 61-70 liable for civil penalties, up to  
4 \$2,500 per day for each violation, and subject Defendant and DOES 61-70 to injunction.

5 **EIGHTH CAUSE OF ACTION**  
6 **(Violation of Health & Safety Code § 25249.6, Failure to Provide Clear and Reasonable  
Warning under Proposition 65 – Against Defendant and DOES 71-80)**

7 56. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 55 ,  
8 inclusive, as if superficially set forth herein.

9 57. By committing the acts alleged above, Defendant and DOES 71-80 have, in the  
10 course of doing business, knowingly and intentionally exposed users of the Bluepoint Oysters to  
11 Cadmium, a chemical known to the State of California to cause reproductive toxicity without  
12 first giving clear and reasonable warning to such individuals within the meaning of Health &  
13 Safety Code § 25249.6 and continue to violate the statute as the Bluepoint Oysters continue to  
14 make its way to individuals in California through the chain of commerce.

15 58. Said violations render Defendant and DOES 71-80 liable for civil penalties, up to  
16 \$2,500 per day for each violation, and subject Defendant and DOES 71-80 to injunction.

17 **NINTH CAUSE OF ACTION**  
18 **(Violation of Health & Safety Code § 25249.6, Failure to Provide Clear and Reasonable  
Warning under Proposition 65 – Against Defendant and DOES 81-90)**

19 59. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 58,  
20 inclusive, as if superficially set forth herein.

21 60. By committing the acts alleged above, Defendant and DOES 81-90 have, in the  
22 course of doing business, knowingly and intentionally exposed users of the Mussels to Lead, a  
23 chemical known to the State of California to cause cancer and reproductive toxicity without first

1 giving clear and reasonable warning to such individuals within the meaning of Health & Safety  
2 Code § 25249.6 and continue to violate the statute as the Mussels continues to make its way to  
3 individuals in California through the chain of commerce.

4 61. Said violations render Defendant and DOES 81-90 liable for civil penalties, up to  
5 \$2,500 per day for each violation, and subject Defendant and DOES 81-90 to injunction.

6 **TENTH CAUSE OF ACTION**  
7 **(Violation of Health & Safety Code § 25249.6, Failure to Provide Clear and Reasonable**  
8 **Warning under Proposition 65 – Against Defendant and DOES 91-100)**

9 62. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 61,  
10 inclusive, as if superficially set forth herein.

11 63. By committing the acts alleged above, Defendant and DOES 91-100 have, in the  
12 course of doing business, knowingly and intentionally exposed users of the Mussels to  
13 Cadmium, a chemical known to the State of California to cause reproductive toxicity without  
14 first giving clear and reasonable warning to such individuals within the meaning of Health &  
15 Safety Code § 25249.6 and continue to violate the statute as the Mussels continue to make its  
16 way to individuals in California through the chain of commerce.

17 64. Said violations render Defendant and DOES 91-100 liable for civil penalties, up  
18 to \$2,500 per day for each violation, and subject Defendant and DOES 91-100 to injunction.

19 **PRAYER**

20 Wherefore, Plaintiff accordingly prays for the following relief:

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

23 66. An injunctive order, pursuant to Health & Safety Code § 25249.7(a), for such  
24 temporary restraining orders, preliminary and permanent injunctive orders as are necessary to

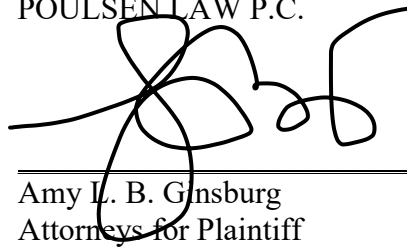
1 prevent Defendants from exposing individuals to Lead and Cadmium without providing a clear  
2 and reasonable warning for the Products;

3 67. On all Causes of Action, an award to Plaintiff of its reasonable attorneys' fees and  
4 costs;

5 68. For such other relief as the Court may deem just and proper.

6  
7 DATED: November 17, 2023

POULSEN LAW P.C.

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Amy L. B. Ginsburg  
Attorneys for Plaintiff  
The Chemical Toxin Working Group Inc. doing  
business as Healthy Living Foundation

# **EXHIBIT A**



**VIA CERTIFIED FIRST CLASS MAIL**

Santa Barbara Fish Market, Inc.  
Joshua Rabinowitz  
16 West Mission St., Suite K  
Santa Barbara, CA 93010

Chief Executive Officer or President  
Santa Barbara Fish Market, Inc.  
c/o Brian Colgate  
117 Harbor Way, Ste. A  
Santa Barbara, CA 93109

**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 and Lead Santa Barbara Fish Market, Inc.  
Compounds

May 19, 2023

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., 1801 Chart Trail, Topanga, California 90290 (“HLF,” “Noticing Party”) HLF, implements measures to reduce the amount of chemical toxins in consumer products posing targeted dangers to fetuses, children, pregnant women, and women of childbearing age; acts in the interest of the people with a mission to bring truth and transparency to consumer product labeling and advertising; improves safety for workers by reducing their exposure to chemicals; publishes consumer health articles, periodicals, books, comparative test results and educates the public. HLF has decades of nuanced expertise with the most vulnerable population groups, as well as in alternative safe manufacturing practices. HLF has achieved reformulation and removal of egregiously carcinogenic products from the market, and is currently prosecuting dozens of violations in popular products in different states.

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 and consumer safety laws. These cases have resulted in significant public benefit, including reformulation of products to remove toxic chemicals to make them safer, and putting label and online warnings on products tested as contaminated with lead, cadmium, acrylamide, dioxane, or removing them from the California market.

HLF’s Chief Officer David W. Steinman is a publisher, health and environmental journalist, and bestselling author of *Diet For A Poisoned Planet* (Crown Ed., 1990, Ballantine 2d Ed., 1992, Running Press 3d Ed., 2007). Among his other books are: *The Safe Shoppers’ Bible* (Macmillan Ed., 1995, Wiley 2d Ed., 2000) and *The Breast Cancer Prevention Program* (Macmillan Ed., 1997). Mr. Steinman represented the public interest at the National Academy of Sciences on the Safe Seafood Committee that produced *Seafood Safety* (Washington, D.C.: National Academies Press, 1991), advised Congress on related legislation, testified before Congress as an expert witness on food safety, was an early proponent of Proposition 65, and a child victim of exposure to toxic chemicals.

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 Products”) listed in the table below, which are manufactured, distributed and/or sold by Santa Barbara Fish Market, 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 Products(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>            |
|--|---------------------------|---------------------------------|
| Santa Barbara Fish Market California Grassy Bar Oysters    | Cadmium and Lead          | Santa Barbara Fish Market, Inc. |
| Santa Barbara Fish Market Littleneck Clams                 | Cadmium and Lead          | Santa Barbara Fish Market, Inc. |
| Santa Barbara Fish Market Manila Clams                     | Cadmium and Lead          | Santa Barbara Fish Market, Inc. |
| Santa Barbara Fish Market Bluepoint Oysters                | Cadmium and Lead          | Santa Barbara Fish Market, Inc. |
| Santa Barbara Fish Market Santa Barbara Hope Ranch Mussels | Cadmium and Lead          | Santa Barbara Fish Market, Inc. |

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

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

The primary route of exposure has been through ingestion.



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.

HLF alleges that while in the course of doing business, the Noticed Parties are knowingly and intentionally exposing consumers to 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 Products are being exposed to cadmium and lead.

With respect to the Specified Products listed above, the violation commenced on the latter of the date that the Specified Product was first offered for sale in California, or April 21, 2020; 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 Products, 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 lead to an allowable level in the Specified Products or, or remove the Specified Product(s) from the California market or, as an alternative, (2) provide a Proposition 65- compliant warning on the label of the Specified Products and online, where applicable, and/or at the point of sale; and (3) pay applicable civil penalties and costs of bringing this action.

### **Demand to Preserve Evidence**

HLF intends to file a lawsuit, in which Noticed Party[ies] will be named as defendants. When a lawsuit is anticipated, California requires a prospective party to take all reasonable steps to preserve documents, tangible things, and electronically stored information (ESI) that are potentially relevant to the anticipated lawsuit and that are in the prospective party's possession, custody, or control. The duty applies equally to hard copy documents and other tangible things and to ESI.

#### **1. Electronically Stored Information**

As ESI can be easily deleted, corrupted, or modified in the normal operations of a business, preservation measures must be implemented immediately. These measures include, but are not limited to, those explained herein.



ESI that may be subject to a duty to preserve includes information electronically, digitally, magnetically, or optically stored. Magnetic, optical and other storage media, including archival and backup media, are also potential locations of ESI.

ESI that is potentially relevant to the contemplated action, and that the Noticed Party[ies] should preserve, includes ESI generated during the relevant time period of alleged violations and relating to the allegations in this Notice.

To satisfy its preservation duties, the Noticed Party[ies] must take all reasonable measures to preserve all hard copy documents, tangible things, and ESI that are potentially relevant to the aforementioned anticipated lawsuit, including the ESI described above. These measures include:

- Halting the Noticed Party[ies]'s routine document preservation or retention policies and its backup recycling policies.
- Instituting a litigation hold and monitoring compliance with the hold on an ongoing basis until this legal matter is fully resolved. A litigation hold ensures that all sources of potentially relevant information are identified and preserved.
- Documents and tangible things must be preserved in their original, unmodified condition. ESI must be preserved in the form in which it is normally maintained (its native format) with all metadata, both system metadata and application metadata, intact.
- Preserving all hardware, portable and personal storage devices, and any other electronic storage devices that contain potentially relevant information. Such devices need not be in current use. They may include devices no longer in use and legacy hardware if there is no other way to view potentially relevant legacy data. The Noticed Party[ies]'s shall not replace, destroy, or modify such hardware and other electronic storage devices in any manner that could delete, damage, or alter the ESI they store.
- Preserving all support information needed to access potentially relevant ESI. Support information includes, but is not limited to, operating systems, installation disks, legacy and other software, operating and user manuals, user IDs, passwords, security and license keys, and encryption/decryption information.

## 2. Preservation Duties Extend to Departing Employees

The Noticed Party[ies]'s preservation duties extend to potentially relevant information in the possession of officers, directors, and employees who depart from employment by the Noticed Party[ies]. Caution should be taken to preserve the ESI of departing officers, directors, and employees whose data is subject to litigation hold requirements.

## 3. Preservation Duties Extend to Information Controlled, but Not Actually Possessed by the Noticed Party[ies]

Since a potential party “controls” documents or information when it has the legal right to obtain them on demand, The Noticed Party[ies]'s preservation duties extend to ESI possessed by its current and former attorneys, accountants, third party information technology vendors, business service providers, and other agents and contractors, and may extend to its subsidiaries, affiliates, and divisions.

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



Please contact this office as soon as possible, and direct all communications regarding this Notice to this office.

Sincerely,

*/s/ Amy Ginsburg*

Amy Ginsburg | Attorney | CA | PA | NJ | AZ | FL | TN | TX | WY | MD  
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: | May 19, 2023   |
| Noticing Party:      | Chemical Toxin Working Group Inc. dba Healthy Living Foundation Inc. |
| Noticed Parties:     | Santa Barbara Fish Market, Inc.                                      |

May 19, 2023

**CERTIFICATE OF MERIT**  
**Health and Safety Code Section 25249.7(d)**  
*To the Notice of Violation*

I, Amy Ginsburg, 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 May 19, 2023 (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.





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: May 19, 2023

By:

*/s/ Amy Ginsburg*

Amy Ginsburg | Attorney | CA | PA | NJ | AZ | FL | TN | TX | WY | MD  
contact@poulsenlaw.org

CERTIFICATE OF SERVICE

I, Jesus Abundis, 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 1031 W 7th Street, Apt 2, Oxnard, CA 93030.

On May 19, 2023, 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 Santa Barbara Fish Market, 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:

|  |   |
|--|---|
| Brian Colgate or Current President or CEO<br>Santa Barbara Fish Market, Inc.<br>117 Harbor Way Ste. A<br>Santa Barbara, CA 93109 | Santa Barbara Fish Market, Inc.<br>Joshua Rabinowitz<br>16 West Mission St., Suite K<br>Santa Barbara, CA 93010 |
|--|---|

On May 19, 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 Santa Barbara Fish Market, 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](https://oag.ca.gov/prop65):

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

On May 19, 2023, 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 Santa Barbara Fish Market, 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<br>Alpine County<br>PO Box 248<br>Markleeville, CA 96120                      | District Attorney<br>Lake County<br>255 North Forbes Street<br>Lakeport, CA 95453                                   | District Attorney<br>Sierra County<br>PO Box 457<br>Downieville, CA 95936                                  |
| District Attorney<br>Amador County<br>708 Court Street, Suite 202<br>Jackson, CA 95642          | District Attorney<br>Los Angeles County<br>Hall of Justice 211 West<br>Temple St. Ste 1200<br>Los Angeles, CA 90012 | District Attorney's Office<br>Siskiyou County Courthouse<br>311 Fourth Street, Room 204<br>Yreka, CA 96097 |
| District Attorney<br>Butte County<br>25 County Center Drive,<br>Suite 245<br>Oroville, CA 95965 | District Attorney<br>Madera County<br>209 West Yosemite Avenue<br>Madera, CA 93637                                  | District Attorney<br>Solano County<br>675 Texas Street, Ste 4500<br>Fairfield, CA 94533                    |
| District Attorney<br>Colusa County<br>310 6 <sup>th</sup> Street<br>Colusa, CA 95932            | District Attorney<br>Marin County<br>3501 Civic Center Drive,<br>Room 130<br>San Rafael, CA 94903                   | District Attorney<br>Stanislaus County<br>832 12th Street, Ste 300<br>Modesto, CA 95354                    |
| District Attorney<br>Del Norte County<br>450 H Street, Suite 171<br>Crescent City, CA 95531     | District Attorney<br>Mendocino County<br>PO Box 1000<br>Ukiah, CA 95482   | District Attorney<br>Sutter County<br>446 Second Street<br>Yuba City, CA 95991                             |
| District Attorney<br>EL Dorado County<br>778 Pacific Street<br>Placerville, CA 95667            | District Attorney<br>Modoc County<br>204 S Court Street, Room<br>202<br>Alturas, CA 96101-4020                      | District Attorney<br>Tehama County<br>PO Box 519<br>Red Bluff, CA 96080                                    |
| District Attorney<br>Fresno County<br>2220 Tulare Street<br>Suite 1000<br>Fresno, CA 93721      | District Attorney<br>Orange County<br>300 N Flower St.<br>Santa Ana, CA 92703                                       | District Attorney<br>Trinity County<br>Post Office Box 310<br>Weaverville, CA 96093                        |

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



contact@PoulsenLaw.org

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

On May 19, 2023, 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 Santa Barbara Fish Market, 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<br>CEPDProp65@acgov.org             | Calaveras County District Attorney<br>Prop65Env@co.calaveras.ca.us |
| Contra Costa County District Attorney<br>sgrassini@contracostada.org | Inyo County District Attorney<br>inyoda@inyocounty.us              |
| Lassen County District Attorney<br>mlatimer@co.lassen.ca.us          | Mariposa County District Attorney<br>mcda@mariposacounty.org       |
| Merced County District Attorney<br>Prop65@countyofmerced.com         | Monterey County District Attorney<br>Prop65DA@co.monterey.ca.us    |
| Napa County District Attorney<br>CEPD@countyofnapa.org               | Nevada County District Attorney<br>DA.Prop65@co.nevada.ca.us       |



|   |  |
|---|--|
| Placer County District Attorney<br>Prop65@placer.ca.gov                       | Plumas County District Attorney<br>davidhollister@countyofplumas.com |
| Riverside County District Attorney<br>Prop65@rivcoda.org                      | Sacramento County District Attorney<br>Prop65@sacda.org              |
| San Diego City Attorney<br>CityAttyProp65@sandiego.gov                        | San Diego County District Attorney<br>SanDiegoDAProp65@sdca.org      |
| San Francisco County District Attorney<br>alethea.sargent@sfgov.org           | San Francisco City Attorney<br>Valerie.Lopez@sfcityatty.org          |
| San Joaquin County District Attorney DA<br>DAConsumer.Environmental@sjcda.org | San Luis Obispo County District Attorney<br>edobroth@co.slo.ca.us    |
| Santa Barbara County District Attorney<br>DAProp65@co.santa-barbara.ca.us     | Santa Clara County District Attorney<br>EPU@da.sccgov.org            |
| Santa Cruz County District Attorney<br>Prop65DA@santacruzcounty.us            | Sonoma County District Attorney<br>jbarnes@sonoma-county.org         |
| Tulare County District Attorney<br>Prop65@co.tulare.ca.us                     | Ventura County District Attorney<br>daspecialops@ventura.org         |
| Yolo County District Attorney<br>cfepd@yolocounty.org                         |  |

I, Jesus Abundis, declare under penalty of perjury that the foregoing is true and correct.

Signature

*Jesus Abundis*

1031 W 7th Street, Apt 2,  
Oxnard, CA 93030

May 19, 2023