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ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco

**09/06/2024**  
Clerk of the Court  
BY: JAMES FORONDA  
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN FRANCISCO

11 EMA BELL,

12 Plaintiff,

13 vs.

14 COLEWILL Aidan, LLC, GEOMAR,  
15 S.A.,

16 Defendants.

Case No.: CGC-24-614422

**FIRST AMENDED COMPLAINT FOR CIVIL  
PENALTIES AND INJUNCTIVE RELIEF**

**(Violation of Health & Safety Code § 25249.5 et  
seq.)**

17 Plaintiff Ema Bell (“Plaintiff”), by and through her attorneys, alleges the following cause  
18 of action in the public interest of the citizens of the State of California.

19 **BACKGROUND OF THE CASE**

20 1. Plaintiff brings this representative action on behalf of all California citizens to  
21 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
22 the Health and Safety Code § 25249.5 et seq (“Proposition 65”), which reads, in relevant part,  
23 “[n]o person in the course of doing business shall knowingly and intentionally expose any  
24 individual to a chemical known to the state to cause cancer or reproductive toxicity without first  
25 giving clear and reasonable warning to such individual ...”. Health & Safety Code § 25249.6.

26 2. This complaint is a representative action brought by Plaintiff in the public interest  
27 of the citizens of the State of California to enforce the People’s right to be informed of the health  
28 hazards caused by exposure to lead and cadmium, toxic chemicals allegedly found in (a) Clams,  
(b) Crabs, and (c) Mussels sold and/or distributed by defendants Colewillaidan, LLC and/or  
Geomar, S.A. (collectively, “Defendants” and each a “Defendant”) in California.

1           3.       Lead<sup>1</sup> and cadmium<sup>2</sup> are harmful chemicals known to the State of California to  
2 cause cancer and birth defects or other reproductive harm.

3           4.       Proposition 65 requires all businesses with ten (10) or more employees that operate  
4 within California or sell products therein to comply with Proposition 65 regulations. Included in  
5 such regulations is the requirement that businesses must label any product containing a Proposition  
6 65-listed chemical that will create an exposure above safe harbor levels with a “clear and  
7 reasonable” warning before “knowingly and intentionally” exposing any person to any such listed  
8 chemical.

9           5.       Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation  
10 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be  
11 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code  
12 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the  
13 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §  
14 25249.7.

15           6.       Plaintiff alleges that Defendants distribute and/or offer for sale in California,  
16 without a requisite exposure warning, (a) Clams, including but not limited to Cole’s Chopped  
17 Clams, (b) Crabs, including but not limited to Cole’s Snow Crabs, and (c) Mussels, including but  
18 not limited to Cole’s Mussels (collectively, the “Products” and each a “Product”) that expose  
19 persons to lead and/or cadmium when consumed.

20           7.       Defendants’ failure to warn consumers and other individuals in California of the  
21 health hazards associated with exposure to lead and/or cadmium in conjunction with the sale and/or  
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23 <sup>1</sup> On October 1, 1992, the state of California listed lead as a chemical known to cause cancer and  
24 it has come under the purview of Proposition 65 regulations since that time. Cal. Code Regs. Tit.  
25 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On February 27, 1987, the State  
of California listed lead as a chemical known to cause birth defects or other reproductive harm.

26 <sup>2</sup> On October 1, 1987, the state of California listed cadmium as a chemical known to cause cancer  
27 and it has come under the purview of Proposition 65 regulations since that time. Cal. Code Regs.  
28 Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On May 1, 1997, the State  
of California listed cadmium as a chemical known to cause birth defects or other reproductive  
harm.

1 distribution of the Products is a violation of Proposition 65 and subjects Defendants to the  
2 enjoinder and civil penalties described herein.

3 8. Plaintiff seeks civil penalties against Defendants for their violations of Proposition  
4 65 in accordance with Health and Safety Code § 25249.7(b).

5 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring  
6 Defendants to provide purchasers or consumers of the Products with required warnings related to  
7 the dangers and health hazards associated with exposure to lead and/or cadmium pursuant to  
8 Health and Safety Code § 25249.7(a).

9 10. Plaintiff further seeks a reasonable award of attorney's fees and costs.

10 **PARTIES**

11 11. Plaintiff is a citizen of the State of California acting in the interest of the general  
12 public to promote awareness of exposures to toxic chemicals in products sold in California and to  
13 improve human health by reducing hazardous substances contained in such items. She brings this  
14 action in the public interest pursuant to Health and Safety Code § 25249.7(d).

15 12. Defendant Colewillaidan, LLC, through its business, effectively manufactures,  
16 imports, distributes, sells, and/or offers the Products for sale or consumption in the State of  
17 California, or it implies by its conduct that it imports, distributes, sells, and/or offers the Products  
18 for sale or consumption in the State of California. Plaintiff alleges that defendant Colewillaidan,  
19 LLC is a "person" in the course of doing business within the meaning of Health & Safety Code  
20 sections 25249.6 and 25249.11.

21 13. Defendant Geomar, S.A., through its business, effectively manufactures, imports,  
22 distributes, sells, and/or offers the Products for sale or consumption in the State of California, or  
23 it implies by its conduct that it imports, distributes, sells, and/or offers the Products for sale or  
24 consumption in the State of California. Plaintiff alleges that defendant Geomar, S.A. is a "person"  
25 in the course of doing business within the meaning of Health & Safety Code sections 25249.6 and  
26 25249.11.

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1 VENUE AND JURISDICTION

2 14. Venue is proper in the County of San Francisco because one or more of the  
3 instances of wrongful conduct occurred, and continue to occur in this county and/or because  
4 Defendants conducted, and continue to conduct, business in the County of San Francisco with  
5 respect to the Products.

6 15. This Court has jurisdiction over this action pursuant to California Constitution  
7 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those  
8 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the enforcement  
9 of violations of Proposition 65 in any Court of competent jurisdiction; therefore, this Court has  
10 jurisdiction over this lawsuit.

11 16. This Court has jurisdiction over Defendant because each Defendant is either a  
12 citizen of the State of California, has sufficient minimum contacts with the State of California, is  
13 registered with the California Secretary of State as foreign corporations authorized to do business  
14 in the State of California, and/or has otherwise purposefully availed itself of the California market.  
15 Such purposeful availment has rendered the exercise of jurisdiction by California courts consistent  
16 and permissible with traditional notions of fair play and substantial justice.

17 STATUTORY BACKGROUND

18 17. The people of the State of California declared in Proposition 65 their right “[t]o be  
19 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
20 harm.” (Section 1(b) of Initiative Measure, Proposition 65.)

21 18. To effect this goal, Proposition 65 requires that individuals be provided with a  
22 “clear and reasonable warning” before being exposed to substances listed by the State of California  
23 as causing cancer and/or birth defects or other reproductive harm. H&S Code § 25249.6 states, in  
24 pertinent part:

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

1           19.     In this case, exposures are caused by consumer products. A “Consumer Product” is  
2 defined as “any article, or component part thereof, including food, that is produced, distributed, or  
3 sold for the personal use, consumption or enjoyment of a consumer.” (Cal. Code Regs., tit. 27, §  
4 25600.1, subd. (d).) Food includes “dietary supplements” as defined in California Code of  
5 Regulations, title 17, section 10200. (*Id.* at subd. (g).) An exposure to a chemical in a Consumer  
6 Product is one “which results from a person’s acquisition, purchase, storage, consumption or other  
7 reasonably foreseeable use of a consumer good, or any exposure that results from receiving a  
8 consumer service.” (27 CCR § 25602, para (b).) H&S Code § 25603(c) states that “a person in the  
9 course of doing business ... shall provide a warning to any person to whom the product is sold or  
10 transferred unless the product is packaged or labeled with a clear and reasonable warning.”

11           20.     Pursuant to H&S Code § 25603.1, the warning may be provided by using one or  
12 more of the following methods individually or in combination:<sup>3</sup>

13                 a.     A warning that appears on a product’s label or other labeling.

14                 b.     Identification of the product at the retail outlet in a manner which provides  
15 a warning. Identification may be through shelf labeling, signs, menus, or a combination  
16 thereof.

17                 c.     The warnings provided pursuant to subparagraphs (a) and (b) shall be  
18 prominently placed upon a product’s labels or other labeling or displayed at the retail outlet  
19 with such conspicuousness, as compared with other words, statements, designs, or devices  
20 in the label, labeling or display as to render it likely to be read and understood by an  
21 ordinary individual under customary conditions of purchase or consumption.

22                 d.     A system of signs, public advertising identifying the system and toll-free  
23 information services, or any other system that provides clear and reasonable warnings.

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27 <sup>3</sup> Alternatively, a person in the course of doing business may elect to comply with the warning  
28 requirements set out in the amended version of 27 CCR 25601, *et.seq.* as amended on August 30,  
2016, and operative on August 30, 2018.

1 21. Proposition 65 provides that any “person who violates or threatens to violate” the  
2 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase  
3 “threaten to violate” is defined to mean creating “a condition in which there is a substantial  
4 probability that a violation will occur.” (H&S Code § 25249.11(e).) Violators are liable for civil  
5 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to  
6 365 days (up to a maximum civil penalty amount per violation of \$912,000.00).

7 **FACTUAL BACKGROUND**

8 22. On October 1, 1992, the state of California listed lead as a chemical known to cause  
9 cancer and it has come under the purview of Proposition 65 regulations since that time. Cal. Code  
10 Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On February 27,  
11 1987, the State of California listed lead as a chemical known to cause birth defects or other  
12 reproductive harm. In summary, lead was listed under Proposition 65 as a chemical known to the  
13 State to cause cancer and birth defects or other reproductive harm.

14 23. On October 1, 1987, the state of California listed cadmium as a chemical known to  
15 cause cancer and it has come under the purview of Proposition 65 regulations since that time. Cal.  
16 Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On May 1,  
17 1997, the State of California listed cadmium as a chemical known to cause birth defects or other  
18 reproductive harm. In summary, cadmium was listed under Proposition 65 as a chemical known  
19 to the State to cause cancer and birth defects or other reproductive harm

20 24. The exposures that are the subject of the Notices result from the purchase,  
21 acquisition, and recommended consumption of the Products. The primary route of exposure to lead  
22 and/or cadmium is through ingestion. When foods contaminated with lead and cadmium are  
23 consumed, ingestion of lead and cadmium will occur which will increase blood lead and cadmium  
24 levels. No clear and reasonable warning is provided with the Products regarding the health hazards  
25 of exposure.

26 25. Defendants have processed, marketed, distributed, offered to sell and/or sold the  
27 Products in California since at least May 6, 2024. The Products continue to be distributed and sold  
28 in California without the requisite warning information.



1 Defendant and to the California Attorney General's office and the offices of the County District  
2 attorneys and City Attorneys for each city with a population greater than 750,000 persons wherein  
3 the herein violations allegedly occurred.

4 34. The Notice complied with all procedural requirements of Proposition 65 including  
5 the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at  
6 least one person with relevant and appropriate expertise who reviewed relevant data regarding lead  
7 and cadmium exposures, and that counsel believed there was meritorious and reasonable cause for  
8 a private action.

9 35. After receiving the Notices, and to Plaintiff's best information and belief, none of  
10 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a  
11 cause of action against Defendant under Proposition 65 to enforce the alleged violations which are  
12 the subject of the Notice.

13 36. Plaintiff is commencing this action more than sixty (60) days from the date of the  
14 Notices to Defendants, as required by law.

15 **FIRST CAUSE OF ACTION**

16 **(By Plaintiff against Defendants for the Violation of Proposition 65)**

17 37. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 36 of  
18 this First Amended Complaint as though fully set forth herein.

19 38. Defendants have, at all times mentioned herein, acted as, manufacturer, distributor,  
20 and/or retailer of the Products.

21 39. Consumption of the Products will expose consumers to lead and/or cadmium,  
22 hazardous chemicals found on the Proposition 65 list of chemicals known to be hazardous to  
23 human health.

24 40. The Products do not comply with the Proposition 65 warning requirements.

25 41. Plaintiff, based on her best information and belief, avers that at all relevant times  
26 herein, and at least since May 6, 2024, continuing until the present, that Defendants have continued  
27 to knowingly and intentionally expose California consumers of the Products to lead and/or  
28 cadmium without providing required warnings under Proposition 65.



1           42.    The exposures that are the subject of the Notices result from the purchase,  
2 acquisition, and recommended consumption of the Products. The primary route of exposure to lead  
3 and/or cadmium is through ingestion. When foods contaminated with lead and cadmium are  
4 consumed, ingestion of lead and cadmium will occur which will increase blood lead and cadmium  
5 levels. No clear and reasonable warning is provided with the Products regarding the health hazards  
6 of exposure.

7           43.    Plaintiff, based on her best information and belief, avers that such exposures will  
8 continue every day until clear and reasonable warnings are provided to purchasers and consumers  
9 or until these known toxic chemicals are removed from the Products.

10          44.    Defendants have knowledge that the normal and reasonably foreseeable  
11 consumption of the Products exposes individuals to lead and/or cadmium, and Defendants intend  
12 that exposures to lead and/or cadmium will occur by its deliberate, non-accidental participation in  
13 the manufacture, importation, distribution, sale and offering of the Products to consumers in  
14 California

15          45.    Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this  
16 First Amended Complaint.

17          46.    Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above  
18 described acts, each Defendant is liable for a maximum civil penalty of \$2,500 per day per  
19 violation.

20          47.    Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically  
21 authorized to grant injunctive relief in favor of Plaintiff and against Defendants.

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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands judgment against Defendants and requests the following relief:

- A. That the court assess civil penalties against each Defendant in the amount of \$2,500 per day for each violation for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) in accordance with Health and Safety Code § 25249.7(b);
- B. That the court preliminarily and permanently enjoin Defendants mandating Proposition 65 compliant warnings on the Products;
- C. That the court grant Plaintiff reasonable attorney’s fees and costs of suit, in the amount of \$50,000.00.
- D. That the court grant any further relief as may be just and proper.

Dated: September 6, 2024

BRODSKY SMITH

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