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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARIN**

DAVID STEINMAN and THE CHEMICAL
TOXIN WORKING GROUP, INC., a California
non-profit corporation,

Plaintiffs,

vs.

CHICKEN OF THE SEA INTERNATIONAL;
TRI-UNION SEAFOODS, LLC dba CHICKEN
OF THE SEA INTERNATIONAL; BUMBLE
BEE FOODS, LLC and DOES 1-100

Defendants.

Case No. CIV1202604

**[PROPOSED] STIPULATED CONSENT
JUDGMENT; [PROPOSED] ORDER
RE: CHICKEN OF THE SEA
INTERNATIONAL**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: June 27, 2012
Trial Date: Not Set

FILED

JUN 20 2014

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: R. Smith, Deputy

1 **1. INTRODUCTION**

2 1.1 On June 5, 2012, Plaintiff David Steinman (“Steinman”), as a private enforcer,
3 and in the public interest, initiated this Action by filing a Complaint for Injunctive and
4 Declaratory Relief and Civil Penalties (the “Complaint”) pursuant to the provisions of
5 California Health and Safety Code section 25249.5 et seq. (“Proposition 65”), against Chicken
6 of the Sea International (“COSI”). On June 26, 2012, David Steinman amended the Complaint
7 to substitute Tri-Union Seafoods, LLC dba Chicken of the Sea International as a defendant.
8 Chicken of the Sea and Tri-Union Seafoods, LLC dba Chicken of the Sea International shall
9 collectively be referred to as COSI. On March 7, 2014, Steinman filed a First Amended
10 Complaint (“Amended Complaint”), adding Plaintiff The Chemical Toxin Working Group
11 (“CTWG”) to this Action. On November 27, 2013, the Court consolidated this case with a
12 separate action against Chicken of the Sea in Case No. CV1202604. David Steinman and
13 CTWG shall be collectively referred to as Plaintiffs. Plaintiffs and Defendant shall collectively
14 be referred to as the “Parties,” each a “Party.”
15

16 1.2 In this Action, Plaintiffs allege that certain products sold by COSI to the general
17 public contain lead and/or cadmium, chemicals listed pursuant to Proposition 65 as carcinogens
18 and reproductive toxicants, and that these products expose consumers at levels requiring a
19 Proposition 65 warning. The following product is subject to the terms of this Consent Judgment
20 and hereinafter shall be referred to as “the Covered Product”: Chicken of the Sea Whole
21 Oysters. The following products shall be referred to as “the Clam Products”: Chicken of the Sea
22 Minced Clams and Chicken of the Sea Whole Baby Clams.

23 1.3 Plaintiff David Steinman is an individual and founder of plaintiff CTWG, a
24 California non-profit corporation. Plaintiffs are private enforcers of Proposition 65, acting in the
25 public interest, that have diligently prosecuted this matter and are settling the case in the public
26 interest.
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1 **1.4** Defendant COSI is a business entity that at all times relevant for purposes of this
2 Consent Judgment employs ten or more persons.

3 **1.5** The Complaint was based on allegations of lead exposure to consumers as set
4 forth in David Steinman's Notice of Violation dated February 24, 2012 served on the Attorney
5 General of the State of California, other public enforcers and COSI in regard to the Covered
6 Product. The Amended Complaint added allegations of lead exposure to consumers as set forth
7 in CTWG's Notices of Violation dated August 8, 2013 in regard to the Clam Products, and
8 cadmium exposure to consumers from the Covered Product as set forth in CTWG's Notice of
9 Violation dated November 12, 2013. A true and correct copy of the Notices of Violation is
10 attached as Exhibit A. More than sixty (60) days have passed since the Notices of Violation
11 were mailed, and no designated governmental entity has filed a complaint against COSI with
12 regard to the Covered Product, the Clam Products or the alleged violations.

13 **1.6** Plaintiffs' Notices of Violation and the Amended Complaint allege that use of
14 the Covered Product and the Clam Products expose persons in California to Proposition 65
15 listed chemicals without first providing clear and reasonable warnings in violation of California
16 Health and Safety Code section 25249.6. COSI denies all material allegations contained in the
17 Notices of Violation and Amended Complaint and specifically denies that it violated
18 Proposition 65 or that the Covered Product or the Clam Products require or required a
19 Proposition 65 warning or otherwise caused harm to any person. Nothing in the Consent
20 Judgment shall be construed as an admission by COSI of any fact, issue of law or violation of
21 law, nor shall compliance with the Consent Judgment constitute or be construed as an
22 admission by COSI of any fact, issue of law or violation of law, at any time, for any purpose.
23 Nothing in the Consent Judgment shall prejudice, waive or impair any right, remedy, argument
24 or defense that COSI may have in other or further legal proceedings.

25 **1.7** The Parties have entered into this Consent Judgment in order to settle,
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1 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.
2 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of
3 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,
4 parent companies, subsidiaries, divisions, affiliates, franchises, licensees, customers, suppliers,
5 distributors, wholesalers, or retailers of any fact, conclusion of law, issue of law, violation of
6 law, fault, wrongdoing, or liability, including without limitation, any admission concerning any
7 alleged violation of Proposition 65 or any other law or legal duty.

8 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
9 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
10 other or future legal proceeding unrelated to these proceedings.

11 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as
12 a Judgment by this Court.

13 **2. JURISDICTION AND VENUE**

14 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
15 jurisdiction over the allegations of violations contained in the Amended Complaint and personal
16 jurisdiction over COSI as to the acts alleged in the Amended Complaint, that venue is proper in
17 Marin County, and that this Court has jurisdiction to enter this Consent Judgment as a full and
18 final resolution of all claims which were or could have been asserted in his action based on the
19 facts alleged in the Notices of Violation and the Amended Complaint.

20 **3. INJUNCTIVE RELIEF, WARNINGS AND TESTING**

21 **3.1** Subject to the provisions set forth in Section 3.5 below, COSI shall not
22 manufacture for sale in the State of California, distribute into the State of California, or directly
23 sell in the State of California, any Covered Product unless each such unit of the Covered
24 Product (1) meets the warning requirements under Section 3.2, or (2) qualifies as a
25 “Reformulated Covered Product” under Section 3.3. COSI confirms that, on January 31, 2014 ,
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1 it ceased the distribution into the State of California and the direct sale in the State of California
2 of any of the Covered Product.

3 **3.1.5** As used in this Consent Judgment, the term “distribute into the State of
4 California” shall mean COSI directly ships a Covered Product into California for sale in
5 California or sells a Covered Product to a distributor or retailer that COSI knows will sell the
6 Covered Product in California.

7 **3.2 Clear and Reasonable Warnings**

8 If COSI determines that it will manufacture for sale in the State of California, distribute
9 into the State of California, or directly sell in the State of California the Covered Product in the
10 future and such Covered Product does not qualify as “Reformulated Covered Product,” then COSI
11 shall provide the following warning:

12
13 **[California Proposition 65] WARNING: THIS PRODUCT CONTAINS LEAD, A**
14 **CHEMICAL KNOWN TO THE STATE OF CALIFORNIA TO CAUSE [CANCER AND]**
15 **BIRTH DEFECTS OR OTHER REPRODUCTIVE HARM, AND CADMIUM, A**
16 **CHEMICAL KNOWN TO THE STATE OF CALIFORNIA TO CAUSE BIRTH DEFECTS**
17 **OR OTHER REPRODUCTIVE HARM.**

18 The word “cancer” shall be used in the warnings above only if the average daily exposure
19 level exceeds 15 micrograms of lead as determined pursuant to the provisions set forth in Section
20 3.3 and 3.4. The words “California Proposition 65” may be included at COSI’s option. No
21 additional language about Proposition 65, lead or cadmium may accompany the Proposition 65
22 warning. COSI shall provide the applicable warning in the following methods:

- 23 1) on the label of the can or container (other than on the underside or bottom of the
24 can or; and/or container) of each individual unit of a Covered Product sold or distributed to
25 retail stores in California and on Covered Product shipped to California consumers;
- 26 2) on COSI’s checkout page on its website for California consumers prior to
27 completion of the sale.
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1 In the website warning, COSI shall identify the Covered Product to which the warning
2 applies. For the receipt/invoice warnings, the receipt/invoice shall identify the Covered Product to
3 which the warning applies and the warning shall be present on the front of the receipt/invoice.
4 COSI must display the above warnings with such conspicuousness, as compared with other words,
5 statements, or design of the label, can, container, and website
6 warning to render the warning likely to be read and understood by an ordinary individual under
7 customary conditions of purchase or use of the Covered Product. Each letter in the word
8 “WARNING” must be in all capital letters and bold print.

9 **3.3 Calculation of Lead Levels; Reformulated Covered Products**

10 A Reformulated Covered Product is one for which the average daily exposure level
11 does not exceed 0.5 micrograms of lead per day and/or no more than 4.1 micrograms of
12 cadmium per day as determined by the formula, testing and quality control methodology
13 described in Section 3.4. As used in this Consent Judgment, “no more than 0.5 micrograms of
14 lead per day” and “no more than 4.1 micrograms of cadmium per day” mean that the samples
15 of the testing under Section 3.4 yield an average daily exposure of no more than 0.5
16 micrograms of lead and 4.1 micrograms of cadmium (with average daily exposure calculated
17 pursuant to Section 3.4 of this Consent Judgment). For a Covered Product that causes
18 exposures in excess of 0.5 micrograms of lead per day, and/or exposures in excess of 4.1
19 micrograms of cadmium per day COSI shall provide the warning set forth in Section 3.2. For
20 purposes of determining which warning, if any, is required pursuant to Section 3.2, the average
21 concentration utilizing the geometric mean of lead and cadmium detection results of five (5)
22 samples of the Covered Product, randomly selected by COSI, will be controlling.

23 **3.4 Formula, Testing and Quality Control Methodology**

24 **3.4.1** For purposes of this Consent Judgment, average daily exposure
25 levels shall be measured in micrograms per day, and shall be calculated using the following
26 formula: the average concentration of lead or cadmium in the product in micrograms per gram,
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1 multiplied by grams of product per serving of the product (using the serving size appearing on
2 the product label), multiplied by frequency of consumption of once every fourteen (14) days.

3 **3.4.2** COSI shall not be required to engage in testing pursuant to this Consent
4 Judgment unless COSI determines that it will manufacture for sale in the State of California,
5 distribute into the State of California, or directly sell in the State of California any of the
6 Covered Product in the future. All testing pursuant to this Consent Judgment shall be
7 performed using a laboratory method that complies with the performance and quality control
8 factors appropriate for the method used, including limit of detection, limit of quantitation,
9 accuracy, and precision and meets the following criteria: Inductively Coupled Plasma-Mass
10 Spectrometry (ICP-MS) achieving a limit of quantitation of less than or equal to 0.010 mg/kg
11 or any other testing method subsequently agreed upon in writing by the Parties.
12

13 **3.4.3** All testing pursuant to this Consent Judgment shall be performed
14 by an independent third-party laboratory certified by the California Environmental Laboratory
15 Accreditation Program for the analysis of heavy metals or a laboratory that is approved by,
16 accredited by, or registered with the United States Food & Drug Administration. If COSI
17 determines that it will manufacture for sale in the State of California, distribute into the State of
18 California, or directly sell in the State of California any of the Covered Product in the future,
19 COSI shall provide written notice to Plaintiffs of its intent to conduct such sales at least one
20 hundred twenty (120) days prior to recommencement of such sales. Testing shall continue for
21 at least four (4) consecutive years from date of recommencement of such sales and at least once
22 per year, for the lead and cadmium testing of five (5) randomly-selected samples of the
23 Covered Product in the form intended for sale to the end-user to be distributed or sold in
24 California. If tests conducted pursuant to this Section demonstrate that no warning is required
25 for the Covered Product during each of four (4) consecutive years, then the testing
26 requirements of this Section will no longer be required as to the Covered Product. However, if
27 after the four-year period, COSI changes suppliers for the Covered Product and/or reformulates
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1 the Covered Product, then COSI shall test the Covered Product at least once after such change
2 is made, and send those test results to Plaintiffs within ten (10) court days of receiving the test
3 results. If COSI ceases the manufacture for sale in the State of California, the distribution into
4 the State of California, or the direct sale in the State of California of the Covered Product under
5 this Section 3.4.3, COSI shall not be required to engage in further testing pursuant to this
6 Consent Judgment.

7 **3.4.4** If COSI determines that it will manufacture for sale in the State of
8 California, distribute into the State of California, or directly sell in the State of California the
9 Covered Products in the future, COSI shall provide to Plaintiffs copies of all laboratory reports
10 with results of testing for lead and/or cadmium performed under this Section no later than
11 ninety (90) days prior to recommencement of sales of the Covered Product. For a period of
12 four (4) years thereafter, COSI shall arrange annually for copies of all laboratory reports with
13 results of testing for lead and cadmium content under and for the purpose of Section 3 of this
14 Consent Judgment to be sent to Plaintiffs upon request within fifteen (15) court days of such
15 request. COSI shall retain all test results and documentation for a period of four (4) years from
16 the date of each test. These reports shall be treated by Plaintiffs as confidential information
17 under the terms of the confidentiality agreement entered into by the Parties.
18

19 **3.5 Products No Longer in COSI's Control**

20 COSI and the Releasees (as defined in Section 8.1 below) shall have no obligation or
21 liability with respect to any Covered Products that are sold and/or distributed in the State of
22 California after January 31, 2014, except as set forth in this Consent Judgment, unless or until
23 COSI resumes the distribution into the State of California or the direct sale in the State of
24 California of the Covered Product.

25 **4. SETTLEMENT PAYMENT**

26 **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil
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1 penalties, attorney's fees and costs in connection with claims regarding the Covered Products,
2 COSI shall make a total payment of \$97,113 within ten (10) days of receiving the Notice of
3 Entry of Judgment. Said payment shall be made by checks apportioned as follows:

4 **4.2** \$14,566.95 shall be payable as civil penalties pursuant to California Health and
5 Safety Code section 25249.7(b)(1). Of this amount, \$10,925.21 shall be payable to the Office
6 of Environmental Health Hazard Assessment ("OEHHA") and \$3,641.73 shall be payable to
7 The Chemical Toxin Working Group, Inc., pursuant to California Health and Safety Code
8 section 25249.12(c)(1) & (d). COSI shall send both civil penalty payments to Plaintiffs'
9 counsel who will be responsible for forwarding the civil penalty to OEHHA along with a copy
10 of the transmittal letter to COSI's counsel.

11 **4.3** \$3,613.00 shall be payable to The Chemical Toxin Working Group, Inc. as
12 reimbursement to CTWG for (A) reasonable costs and expenses associated with the
13 enforcement of Proposition 65 and other costs incurred as a result of Plaintiffs' work in
14 bringing this action; and (B) \$36,433.05 shall be payable to The Chemical Toxin Working
15 Group, Inc. in lieu of further civil penalties, for day-to-day business activities such as continued
16 enforcement of Proposition 65, which includes work analyzing, researching and testing food
17 and other consumer products that may contain Proposition 65 chemicals.

18 **4.4** \$36,211.00 shall be payable to Michael Freund and \$6,289.00 shall be payable to
19 Ryan Hoffman as reimbursement of Plaintiffs' attorneys' fees.

20 **4.5** COSI shall mail or deliver the payments in this Section in the form of
21 checks to the address of Michael Freund & Associates as stated in Section 11 (Provision of
22 Notice) below. Within two (2) court days of the Effective Date, Plaintiffs and their counsel
23 will provide their taxpayer identification information and W-9 forms to enable COSI to process
24 the payments.
25

26 **5. MODIFICATION OF CONSENT JUDGMENT**

27 **5.1** This Consent Judgment may be modified only by: (i) written agreement and
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1 stipulation of the Parties and (ii) upon entry of a modified Consent Judgment by the Court.

2 **5.2** If COSI seeks to modify this Consent Judgment under Section 5.1, then
3 COSI must provide written notice to Plaintiffs of its intent (“Notice of Intent”). If Plaintiffs
4 seek to meet and confer with COSI regarding the proposed modification in the Notice of Intent,
5 then Plaintiffs must provide written notice to COSI within ten (10) days of receiving the Notice
6 of Intent. If Plaintiffs notify COSI in a timely manner of their intent to meet and confer, then
7 the Parties shall meet and confer in good faith as required in this Section. The Parties shall
8 meet in person or by phone within ten (10) days of Plaintiffs’ notification of their intent to meet
9 and confer. Within ten (10) days of such meeting, if any Plaintiff disputes the proposed
10 modification, that Plaintiff must provide to COSI a written basis for its position. The Parties
11 shall continue to meet and confer for an additional ten (10) days in an effort to resolve any
12 remaining disputes. The Parties may agree in writing to different deadlines for the meet-and-
13 confer period.
14

15 **5.3** In the event that COSI initiates or otherwise requests a modification under
16 Section 5.1, COSI shall reimburse Plaintiffs their documented reasonable costs and reasonable
17 attorney’s fees for the time spent in the meet-and-confer process and filing and arguing a joint
18 motion or application in support of a modification of the Consent Judgment; provided,
19 however, that these fees and costs shall not exceed \$8,000 total without the prior written
20 consent of COSI.

21 **5.4** Where the meet-and-confer process does not lead to a joint motion or
22 application in support of a modification of the Consent Judgment, then either Party may seek
23 judicial relief on its own. In such a situation, the prevailing party may seek to recover costs and
24 reasonable attorney’s fees. As used in the preceding sentence, the term “prevailing party”
25 means a party who is successful in obtaining relief more favorable to it than the relief that the
26 other party was amenable to providing during the Parties’ good faith attempt to resolve the
27 dispute that is the subject of the modification.
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1 **5.5** If any court in a case alleging that a defendant sold canned whole oysters without
2 providing clear and reasonable warnings regarding the presence of lead or cadmium in violation
3 of Proposition 65 renders a final judgment that such products do not require a warning under
4 Proposition 65 because the average daily exposure is at or below the average daily exposure for
5 the Covered Products, based on the exposure calculation accepted by that court, then COSI shall
6 be entitled to seek to modify this Consent Judgment to eliminate or modify the injunctive relief
7 set forth in Section 3, consistent with the court judgment as described herein, and considering
8 any differences between the Covered Product and the canned whole oyster products addressed in
9 another settlement or court judgment. In addition, COSI shall be entitled to seek to modify this
10 Consent Judgment to eliminate or modify the injunctive relief set forth in Section 3 if (a) lead or
11 cadmium are removed from the Proposition 65 list of chemicals; or (b) if any court in a case
12 alleging that a defendant sold canned whole oysters without providing clear and reasonable
13 warnings regarding the presence of lead or cadmium in violation of Proposition 65 renders a
14 final judgment that such products do not require a warning under Proposition 65 because such
15 warnings are preempted by federal law, so long as such modification is consistent with the court
16 judgment as described herein. Plaintiffs shall not be entitled to object to any modifications
17 sought under this Section 5.5, except based upon an error in calculation of the average daily
18 exposure. The reimbursement provisions of Sections 5.3 and 5.4 above are not applicable to
19 modifications sought under this Section 5.5. If Plaintiffs object to the calculation of the average
20 daily exposure and a court sustains the objections, COSI shall reimburse Plaintiffs their
21 documented reasonable costs and reasonable attorney's fees incurred to raise the objection. Any
22 fees and costs related to a sustained objection shall not exceed \$8,000 total without the prior
23 written consent of COSI.

24 **6. RETENTION OF JURISDICTION; ENFORCEMENT OF CONSENT**
25 **JUDGMENT**

26 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate
27 this Consent Judgment.

28 **6.2** Only after it complies with Section 15 below may any Party, by motion or

1 application for an order to show cause filed with this Court, enforce the terms and conditions
2 contained in this Consent Judgment.

3 **6.3** If COSI determines that it will manufacture for sale in the State of California,
4 distribute into the State of California, or directly sell in the State of California the Covered
5 Product in the future, and subsequently any Plaintiff alleges that any such Covered Product
6 fails to qualify as a Reformulated Covered Product (for which a Plaintiff alleges that no
7 warning has been provided), then the Plaintiff shall inform COSI in a reasonably prompt
8 manner of the Plaintiff's test results. COSI shall, within thirty (30) days following such notice,
9 provide the Plaintiff with testing information, from an independent third-party laboratory
10 meeting the requirements of Sections 3.4.2 and 3.4.3, demonstrating COSI's compliance with
11 the Consent Judgment. The Parties shall first attempt to resolve the matter prior to any Plaintiff
12 taking any further legal action with the Court.
13

14 **7. APPLICATION OF CONSENT JUDGMENT**

15 This Consent Judgment shall have no application to the Covered Product or Clam Products
16 which are distributed or sold exclusively outside the State of California.

17 **8. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

18 **8.1** This Consent Judgment is a full, final, and binding resolution between Plaintiffs,
19 on behalf of themselves and in the public interest, and COSI, of any alleged violation of
20 Proposition 65 or its implementing regulations for failure to provide Proposition 65 warnings of
21 exposure to lead and cadmium from the handling, use, or consumption of the Covered Product
22 and fully resolves all claims that have been or could have been asserted in this Action up to and
23 including the date of entry of Judgment for failure to provide Proposition 65 warnings for
24 exposure to lead and cadmium from the Covered Product. Plaintiffs, on behalf of themselves
25 and in the public interest, hereby discharge and release COSI, its parents, subsidiaries, affiliated
26 entities under common ownership, directors, officers, agents, employees, attorneys, and each
27 entity to whom COSI directly or indirectly distributes or sells the Covered Product, including
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1 but not limited to, downstream distributors, wholesalers, customers, retailers, franchises,
2 cooperative members and licensees, including, but not limited to, The Kroger Co.,
3 SUPERVALU Inc. and Amazon.com Inc. (collectively, "Releasees") from any and all claims,
4 actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs and
5 expenses asserted, or that could have been asserted, as to any alleged violation of Proposition
6 65 arising from the failure to provide Proposition 65 warnings on the Covered Product
7 regarding lead and/or cadmium, as set forth in the Notices of Violation and the Amended
8 Complaint.

9
10 **8.2** Each Plaintiff, on behalf of itself only, hereby releases and discharges the
11 Releasees from all claims, causes of action, obligations, costs, expenses, attorney's fees,
12 damages, losses, liabilities and demands of Plaintiffs of any nature, character, or kind, whether
13 known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to lead
14 and/or cadmium in the Covered Product and Clam Products as set forth in the Notices of
15 Violation and the Amended Complaint that have been or could have been asserted in this Action
16 up to and including the date of entry of Judgment for failure to provide Proposition 65 warnings
17 for exposure to lead and/or cadmium in the Covered Product and Clam Products. Each Plaintiff,
18 on behalf of itself only, waive any and all rights they may have under any applicable statute,
19 including, but not limited to California Civil Code Section 1542 or common law principle which
20 would limit the effect of the release in Section 8.1 and 8.2 to those claims actually known or
21 suspected to exist at the time of the date of entry of Judgment. Plaintiffs have full knowledge of
22 the contents of California Civil Code Section 1542, which reads as follows:

23 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
24 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT
25 TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
26 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
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1 OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
2 HER SETTLEMENT WITH THE DEBTOR.

3 Each Plaintiff, on behalf of itself only, acknowledges and understands the significance and
4 consequences of this specific waiver of California Civil Code Section 1542.

5 **8.3** Compliance with the terms of this Consent Judgment shall be deemed to
6 constitute compliance with Proposition 65 by the Releasees regarding alleged exposures to lead
7 and/or cadmium in the Covered Product and Clam Products as set forth in the Notices of
8 Violation and the Amended Complaint.

9 **8.4** Plaintiffs and COSI each release and waive all claims they may have
10 against each other for any statements or actions made or undertaken by them in connection with
11 the Notices of Violation or the Amended Complaint; provided, however, that nothing in
12 Section 8 shall affect or limit any Party's right to seek to enforce the terms of this Consent
13 Judgment.
14

15 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

16 In the event that any of the provisions of this Consent Judgment is held by a court to be
17 unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.

18 **10. GOVERNING LAW**

19 The terms and conditions of this Consent Judgment shall be governed by and construed in
20 accordance with the laws of the State of California.

21 **11. PROVISION OF NOTICE**

22 All notices required to be given to either Party to this Consent Judgment by the other shall
23 be in writing and sent to the following agents listed below by: (a) first-class, registered, or certified
24 mail; (b) overnight courier; or (c) personal delivery. Courtesy copies via email may also be sent.

25 **FOR DAVID STEINMAN AND THE CHEMICAL TOXIN WORKING GROUP, INC.:**

26 David Steinman
27 The Chemical Toxin Working Group, Inc.
1801 Chart Trail
28 Topanga, CA 90290

1 **With a copy to:**

2 Michael Freund
3 Michael Freund & Associates
4 1919 Addison Street, Suite 105
5 Berkeley, CA 94704
6 Telephone: (510) 540-1992
7 Facsimile: (510) 540-5543

8 **FOR CHICKEN OF THE SEA INTERNATIONAL:**

9 John Barker
10 Chicken of the Sea International
11 9330 Scranton Road, Suite 500
12 San Diego, CA 92121

13 **With a copy to:**

14 Forest A. Hainline III
15 Patrick S. Thompson
16 Robert B. Bader
17 Goodwin Procter LLP
18 Three Embarcadero Center, 24th Floor
19 San Francisco, CA 94111
20 Telephone: (415) 733-6000
21 Facsimile: (415) 677-9041

22 **12. COURT APPROVAL**

23 **12.1** If this Consent Judgment is not approved by the Court, it shall be void and have
24 no force or effect.

25 **12.2** Plaintiffs shall comply with California Health and Safety Code section
26 25249.7(f) and with Title II of the California Code Regulations, Section 3003.

27 **13. EXECUTION AND COUNTERPARTS**

28 This Consent Judgment may be executed in counterparts, which taken together shall be
deemed to constitute one document. A facsimile or .pdf signature shall be construed as valid as
the original signature.

14. DRAFTING

The terms of this Consent Judgment have been reviewed by the respective counsel for the
each Party to this settlement prior to its signing, and each Party has had an opportunity to fully
discuss the terms with counsel. The Parties agree that, in any subsequent interpretation and

1 construction of this Consent Judgment entered thereon, the terms and provisions shall not be
2 construed against any Party.

3 **15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

4 If a dispute arises with respect to either Party's compliance with the terms of this Consent
5 Judgment entered by the Court, the Parties shall meet in person or by telephone and endeavor to
6 resolve the dispute in an amicable manner. No action or motion may be filed in the absence of
7 such a good faith attempt to resolve the dispute beforehand. In the event an action or motion is
8 filed, however, the prevailing party may seek to recover costs and reasonable attorney's fees. As
9 used in the preceding sentence, the term "prevailing party" means a party who is successful in
10 obtaining relief more favorable to it than the relief that the other party was amenable to providing
11 during the parties' good faith attempt to resolve the dispute that is the subject of such enforcement
12 action.
13

14 **16. ENTIRE AGREEMENT, AUTHORIZATION**

15 **16.1** This Consent Judgment contains the sole and entire agreement and
16 understanding of the Parties with respect to the entire subject matter herein, and any and all
17 prior discussions, negotiations, commitments and understandings related hereto. No
18 representations, oral or otherwise, express or implied, other than those contained herein have
19 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
20 herein, shall be deemed to exist or to bind any Party.

21 **16.2** Each signatory to this Consent Judgment certifies that he or she is fully
22 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as
23 explicitly provided herein, each Party shall bear its own fees and costs.

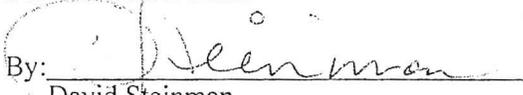
24 **17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
25 **CONSENT JUDGMENT**

26 This Consent Judgment has come before the Court upon the request of the Parties. The
27 Parties request the Court to fully review this Consent Judgment and, being fully informed
28 regarding the matters which are the subject of this action, to:

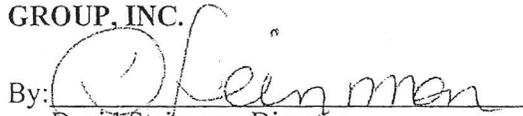
- 1 (1) Find that the terms and provisions of this Consent Judgment represent a fair and equitable
2 settlement of all matters raised by the allegations of the Amended Complaint, that the matter has
3 been diligently prosecuted, and that the public interest is served by such settlement; and
4 (2) Make the findings pursuant to California Health and Safety Code section 25249.7(f)(4),
5 approve the Settlement, and approve this Consent Judgment.

6 **IT IS SO STIPULATED:**

7
8
9 Dated: 3-31, 2014

10 **DAVID STEINMAN**
By: 
David Steinman

11
12
13 Dated: 3-31, 2014

14 **THE CHEMICAL TOXIN WORKING**
GROUP, INC.
By: 
David Steinman, Director

15
16
17 Dated: _____, 2014

18 **CHICKEN OF THE SEA INTERNATIONAL**
AND TRI-UNION SEAFOODS, LLC DBA
CHICKEN OF THE SEA INTERNATIONAL
By: _____
Shue Wing Chan, President

1 (1) Find that the terms and provisions of this Consent Judgment represent a fair and equitable
2 settlement of all matters raised by the allegations of the Amended Complaint, that the matter has
3 been diligently prosecuted, and that the public interest is served by such settlement; and

4 (2) Make the findings pursuant to California Health and Safety Code section 25249.7(f)(4),
5 approve the Settlement, and approve this Consent Judgment.

6 **IT IS SO STIPULATED:**

7
8
9 Dated: _____, 2014

DAVID STEINMAN

10 By: _____
11 David Steinman

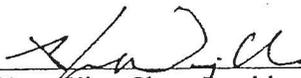
12
13 Dated: _____, 2014

**THE CHEMICAL TOXIN WORKING
GROUP, INC.**

14
15 By: _____
David Steinman, Director

16
17 Dated: 3/24, 2014

**CHICKEN OF THE SEA INTERNATIONAL
AND TRI-UNION SEAFOODS, LLC DBA
CHICKEN OF THE SEA INTERNATIONAL**

18
19
20 By: 
Shue Wing Chan, President

1 APPROVED AS TO FORM:
2

3 Dated: March 31, 2014

MICHAEL FREUND & ASSOCIATES

4 By: mf
5 Michael Freund
6 Attorney for David Steinman and The
7 Chemical Toxin Working Group, Inc.
8

9 Dated: 24 March, 2014

GOODWIN PROCTER LLP

10 By: Patrick S. Thompson
11 Patrick S. Thompson
12 Attorneys for Defendants Chicken of the Sea
13 International and Tri-Union Seafoods, LLC
14 dba Chicken of the Sea International
15

16 **ORDER AND JUDGMENT**

17 Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is
18 approved and Judgment is hereby entered according to its terms.

19 Dated: 6/20, 2014

PAUL M. HAAKENSON
20 _____
21 Judge of the Superior Court
22
23
24
25
26
27
28

EXHIBIT A

LAW OFFICE OF
MICHAEL FREUND

1919 ADDISON STREET, SUITE 105
BERKELEY, CALIFORNIA 94704-1101

TEL (510) 540-1892
FAX (510) 540-5543
EMAIL FREUND1@AGL.COM

February 24, 2012

VIA CERTIFIED MAIL

John Signorino, CEO
Chicken of the Sea International
4510 Executive Drive, Suite 300
San Diego, CA 92186

VIA PRIORITY MAIL

District Attorneys of All California Counties
and Select City Attorneys
(See Attached Certificate of Service)

Office of the California Attorney General
Proposition 65 Enforcement Reporting
1515 Clay Street, Suite 2000
P.O. Box 70550
Oakland, CA 94612-0550

Re: Notice of Violation Against Chicken of the Sea International for Violation of California Health & Safety Code Section 25249.5 et seq.

Dear Addressees:

I represent David Steinman, a committed environmentalist, journalist, consumer health advocate, publisher and author. His major books include Diet for a Poisoned Planet (1990, 2007); The Safe Shopper's Bible (1995); Living Healthy in a Toxic World (1996); and Safe Trip to Eden: Ten Steps to Save the Planet Earth from Global Warming Meltdown (2007). Through this Notice of Violation, Mr. Steinman seeks to reduce consumer exposures to lead in the named product set forth herein.

This letter constitutes notification that Chicken of the Sea International ("Chicken of the Sea") has violated the warning requirement of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with section 25249.5 of the Health and Safety Code). The product that is the subject of this Notice of Violation and the chemical in the product identified as exceeding allowable levels are:

Chicken of the Sea Whole Oysters – lead

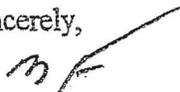
Chicken of the Sea has manufactured, marketed, distributed and/or sold the listed product which has exposed and continues to expose numerous individuals within California to lead. This chemical was listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer on October 1, 1992 and as a chemical known to cause developmental toxicity, and male and female reproductive toxicity on February 27, 1987. The time period of these violations commenced one year after the listed dates above. The primary route of exposure has been through ingestion.

Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to certain listed chemicals. Chicken of the Sea is in violation of Proposition 65 because it failed to provide a warning to consumers that they are being exposed to lead. (22 C.C.R. section 12601.) While in the course of doing business, the company is knowingly and intentionally exposing consumers to this chemical without first providing a clear and reasonable warning. (Health and Safety Code section 25249.6.) The method of warning should be a warning that appears on the product's label. 22 C.C.R. section 12601 (b)(1) (A). There are no warnings currently present on the company's label for this product.

Proposition 65 requires that notice and intent to sue be given to a violator 60-days before the suit is filed. With this letter, David Steinman gives notice of the alleged violation to the noticed party and the appropriate governmental authorities. This Notice of Violation covers all violations of Proposition 65 that are currently known to Mr. Steinman from information now available to us. Mr. Steinman is continuing his investigation that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, and referenced as Appendix A, has been provided to the noticed party.

If you have any questions, please contact my office at your earliest convenience.

Sincerely,



Michael Freund

cc: David Steinman

Attachments:

Certificate of Merit

Certificate of Service

OEHHA Summary to Chicken of the Sea International

Additional Supporting Information for Certificate of Merit (to Attorney General only)

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7 (d)

I, Michael Freund hereby declare:

1. This Certificate of Merit accompanies the attached Notice of Violation in which it is alleged that the party identified in the Notice has violated Health and Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party David Steinman. Mr. Steinman is a committed environmentalist, journalist, consumer health advocate, publisher and author. The Notice of Violation alleges that the party identified has exposed persons in California to lead from the specified consumer product. Please refer to the Notice of Violation for additional details regarding the product names and alleged violations.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the subject of the action. In particular, I have consulted with the chemists who conducted the laboratory testing for lead regarding this product and I have relied on the testing results. The testing was conducted by a reputable testing laboratory by experienced scientists. These facts, studies or other data derived through this investigation overwhelmingly demonstrate that the party identified in the Notice of Violation exposes persons to lead through ingestion.
4. Based on the information obtained through these consultants and on other information in my possession, I believe there is sufficient evidence that human exposures exist from exposure to the listed product from the noticed party. Furthermore, 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 plaintiff’s 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.

5. The copy of this Certificate of Merit served on the California Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & 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: February 23, 2012



Michael Freund
Attorney for David Steinman

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the County of Alameda. I am over the age of eighteen years and not a party to the within entitled action; my business address is 1915 Addison Street, Berkeley, California 94704. On February 27, 2012 I served the within:

Notice of Violation and Certificate of Merit Against Chicken of the Sea International for Violation of California Health & Safety Code Section 25249.5 et seq. (Supporting Documentation sent to Attorney General only)

on the parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box in Berkeley, California as follows:

See attached Service List

I, Michael Freund, declare under penalty of perjury that the foregoing is true and correct.

Executed on February 27, 2012 at Berkeley, California.



Michael Freund

SERVICE LIST

District Attorney of Alameda County
1225 Fallon Street, Room 900
Oakland, CA 94612

District Attorney of Colusa County
547 Market Street
Colusa, CA 95932

District Attorney of Contra Costa
County
627 Ferry Street
Martinez, CA 94553

District Attorney of Alpine County
P.O. Box 248
Markleeville, CA 96120

District Attorney of Del Norte
County
450 H Street, Ste 171
Crescent City, CA 95531

District Attorney of Amador County
708 Court Street, #202
Jackson, CA 95842

District Attorney of Butte County
25 County Center Drive
Oroville, CA 95965

District Attorney of El Dorado
County
515 Main Street
Placerville, CA 95667

District Attorney of Calaveras
County
891 Mountain Ranch Road
San Andreas, CA 95249

District Attorney of Fresno County
2220 Tulare Street, #1000
Fresno, CA 93721

District Attorney of Glenn County
P.O. Box 430
Willows, CA 95988

District Attorney of Kings County
1400 West Lacey
Hanford, CA 93230

District Attorney of Lake County
255 N. Forbes Street
Lakeport, CA 95453

District Attorney of Humboldt
County
825 5th Street
Eureka, CA 95501

District Attorney of Imperial County
939 Main Street
El Centro, CA 92243

District Attorney of Lassen County
220 S. Lassen St., Ste 8
Susanville, CA 96130

District Attorney of Inyo County
P.O. Drawer D
Independence, CA 93526

District Attorney of Los Angeles
County
210 W. Temple Street, Room 345
Los Angeles, CA 90012

District Attorney of Madera County
209 West Yosemite Avenue
Madera, CA 93637

District Attorney of Kern County
1215 Truxtun Avenue
Bakersfield, CA 93301

District Attorney of Marin County
3501 Civic Center Dr., Room 130
San Rafael, CA 94903

District Attorney of Mono County
P.O. Box 617
Bridgeport, CA 93517

District Attorney of Mariposa
County
P.O. Box 730
Mariposa, CA 95338

District Attorney of Monterey
County
230 Church Street, Bldg. 2
Salinas, CA 93901

District Attorney of Mendocino
County
P.O. Box 1000
Ukiah, CA 95482

District Attorney of Napa County
931 Parkway Mall
Napa, CA 94559

District Attorney of Merced County
2222 "H" Street
Merced, CA 95340

District Attorney of Nevada County
201 Church St., Suite 8
Nevada City, CA 95959

District Attorney of Orange
County
401 Civic Ctr Drive West
Santa Ana, CA 92701

District Attorney of Modoc
County
204 S Court Street
Alturas, CA 96101-4020

District Attorney of Placer
County
11562 "B" Avenue
Auburn, CA 95603

District Attorney of San
Bernardino County
316 N. Mountain View Avenue
San Bernardino, CA 92415

District Attorney of Plumas
County
520 Main Street, Room 404
Quincy, CA 95971

District Attorney of San Diego
County
330 West Broadway, Suite 1320
San Diego, CA 92101

District Attorney of Riverside
County
4075 Main Street
Riverside, CA 92501

District Attorney of San
Francisco County
850 Bryant Street, Rm 325
San Francisco, CA 94103

District Attorney of Sacramento
County
901 "G" Street
Sacramento, CA 95814

District Attorney of San Joaquin
County
P.O. Box 990
Stockton, CA 95201

District Attorney of San Luis
Obispo County
1050 Monterey St, Room 450
San Luis Obispo, CA 93408

District Attorney of San Benito
County
419 Fourth Street, 2nd Floor
Hollister, CA 95023

District Attorney of San Mateo
County
400 County Ctr, 3rd Fl
Redwood City, CA 94063

District Attorney of Sierra County
Courthouse, P.O. Box 457
Downsville, CA 95936

District Attorney of Santa Barbara
County
1105 Santa Barbara Street
Santa Barbara, CA 93101

District Attorney of Siskiyou County
P.O. Box 886
Yreka, CA 96097

District Attorney of Solano County
675 Texas Street, Suite 4500
Fairfield, CA 94533

District Attorney of Santa Clara
County
70 West Hedding Street, West
Wing
San Jose, CA 95110

District Attorney of Santa Cruz
County
701 Ocean Street, Room 200
Santa Cruz, CA 95060

District Attorney of Sonoma County
600 Administration Drive, Room
212J
Santa Rosa, CA 95403

District Attorney of Shasta County
1525 Court Street, Third Floor
Redding, CA 96001-1632

District Attorney of Stanislaus
County
600 11th Street, Room 200
PO BOX 442
Modesto, CA 95353

District Attorney of Sutter County
446 Second Street
Yuba City, CA 95991

District Attorney of Ventura County
800 South Victoria Ave
Ventura, CA 93009

District Attorney of Tehama County
P.O. Box 519
Red Bluff, CA 96080

District Attorney of Yolo County
301 Second Street
Woodland, CA 95695

District Attorney of Trinity County
P.O. Box 310
11 Court St.
Weaverville, CA 96093

District Attorney of Yuba County
215 Fifth Street
Marysville, CA 95901

District Attorney of Tulare County
221 S. Mooney Ave, Room 224
Visalia, CA 93291

District Attorney of Tuolumne
County
423 No. Washington Street
Sonora, CA 95370

San Jose City Attorney's Office
200 East Santa Clara Street
San Jose, CA 95113

Los Angeles City Attorney's Office
300 City Hall East
200 N. Main Street
Los Angeles, CA 90012

San Diego City Attorney's Office
1200 3rd Avenue #1620
San Diego, CA 92101

San Francisco City Attorney's
Office
City Hall, Room 234
San Francisco, CA 94102

California Attorney General's
Office
Attention: Proposition 65
Coordinator
1515 Clay Street, Suite 2000
P.O. Box 70560
Oakland, CA 94612

Antonio CEO & President
of the Sea International
1510 Executive Drive, Ste 300
San Diego, CA 92121-3029

Michael Freund & Associates

1919 Addison Street, Suite 105

Berkeley, CA 94704

Voice: 510.540.1992 • Fax: 510.540.5543

Michael Freund, Esq.
Ryan Hoffman, Esq.

OF COUNSEL:
Denise Ferkich Hoffman, Esq.

August 8, 2013

VIA CERTIFIED MAIL

VIA PRIORITY MAIL

Shue Wing Chan, President & CEO
Tri-Union Seafoods, LLC dba
Chicken of the Sea International
9330 Scranton Road, Suite 500
San Diego, CA 92121

District Attorneys of All California Counties
and Select City Attorneys
(See Attached Certificate of Service)

Office of the California Attorney General
Proposition 65 Enforcement Reporting
1515 Clay Street, Suite 2000
P.O. Box 70550
Oakland, CA 94612-0550

**Re: Notice of Violation Against Tri-Union Seafoods, LLC, dba Chicken of the Sea
International for Violation of California Health & Safety Code Section
25249.5 et seq.**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent The Chemical Toxin Working Group, Inc., (“CTWG”) a California non-profit corporation dedicated to reducing the amount of chemical toxins in consumer products. CTWG was created by David Steinman, a committed environmentalist, journalist, consumer health advocate, publisher and author. His major books include Diet for a Poisoned Planet (1990, 2007); The Safe Shopper’s Bible (1995); Living Healthy in a Toxic World (1996); and Safe Trip to Eden: Ten Steps to Save the Planet Earth from Global Warming Meltdown (2007). Through this Notice of Violation, CTWG seeks to reduce exposures to lead in products ingested by consumers.

This letter constitutes notification that Tri-Union Seafoods, LLC, dba Chicken of the Sea International (“Chicken of the Sea”) has violated the warning requirement of Proposition 65, the Safe Drinking Water and Toxic enforcement Act (commencing with section 25249.5 of the Health and Safety Code). The products subject to this Notice of Violation and the chemical in the products identified as exceeding allowable levels are:

- Chicken of the Sea Minced Clams – Lead**
- Chicken of the Sea Whole Baby Clams - Lead**

Chicken of the Sea has manufactured, marketed, distributed and/or sold the above products which have exposed and continue to expose numerous individuals within California to lead. This

chemical was listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer on October 1, 1992 and as a chemical known to cause developmental toxicity, and male and female reproductive toxicity on February 27, 1987. These violations have occurred every day since at least August 8, 2010, and will continue every day until the lead is removed from the noticed products or until clear and reasonable warnings are provided. The primary route of exposure has been through ingestion.

Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to certain listed chemicals. Chicken of the Sea is in violation of Proposition 65 because the company failed to provide a warning to consumers that they are being exposed to lead. (22 C.C.R. section 12601.) While in the course of doing business, the company is knowingly and intentionally exposing consumers to this chemical without first providing a clear and reasonable warning. (Health and Safety Code section 25249.6.) The method of warning should be a warning that appears on the product's label. 22 C.C.R. section 12601 (b)(1) (A). There are no warnings currently present on the company's label for these products.

Proposition 65 requires that notice and intent to sue be given to a violator 60-days before the suit is filed. With this letter, CTWG gives notice of the alleged violations to the noticed party and the appropriate governmental authorities. This Notice of Violation covers all violations of Proposition 65 that are currently known to the noticing party from information now available. CTWG is continuing its investigation that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, and referenced as Appendix A, has been provided to the noticed party.

If you have any questions, please contact my office at your earliest convenience.

Sincerely,



Michael Freund

cc: The Chemical Toxin Working Group, Inc., David Steinman

Attachments:

Certificate of Merit

Certificate of Service

OEHHA Summary to Tri-Union Seafoods, LLC dba Chicken of the Sea International

Additional Supporting Information for Certificate of Merit (to Attorney General only)

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7 (d)

I, Michael Freund hereby declare:

1. This Certificate of Merit accompanies the attached Notice of Violation in which it is alleged that the party identified in the Notice has violated Health and Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party The Chemical Toxin Working Group, Inc. The Notice of Violation alleges that the party identified has exposed persons in California to lead from specified consumer products without providing a Proposition 65 warning. Please refer to the Notice of Violation for additional details regarding the product names and alleged violations.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the subject of the action. In particular, I have consulted with the laboratory who conducted the testing for lead regarding these products and I have relied on the testing results. The testing was conducted by a reputable testing laboratory by experienced scientists. These facts, studies or other data derived through this investigation overwhelmingly demonstrate that the party identified in the Notice of Violation exposes persons to lead through ingestion.
4. Based on the information obtained through the testing laboratory and on other information in my possession, I believe there is sufficient evidence that human exposures exist from exposure to the listed products from the noticed party. Furthermore, 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

plaintiff's 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.

5. The copy of this Certificate of Merit served on the California Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & 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: August 8, 2013



Michael Freund
Attorney for The Chemical Toxin Working Group,
Inc.

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the County of Alameda. I am over the age of eighteen years and not a party to the within entitled action. My business address is 1919 Addison Street, Suite 105, Berkeley, California 94704.. On August 8, 2013 I served the within:

Notice of Violation Against Tri-Union Seafoods, LLC, dba Chicken of the Sea International for Violation of California Health & Safety Code Section 25249.5 et seq. and Certificate of Merit (Supporting Documentation sent to Attorney General only)

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box in Berkeley, California addressed to the names set forth on the Notice of Violation and on the attached Service List.

I, Michael Freund, declare under penalty of perjury that the foregoing is true and correct. Executed on August 8, 2013 at Berkeley, California



Michael Freund

Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Los Angeles County 210 West Temple Street, Suite 18000 Los Angeles CA 90012	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Francisco County 850 Bryant Street, Suite 322 San Francisco, CA 94103	District Attorney, Ventura County 800 South Victoria Ave, Suite 314 Ventura, CA 93009
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Joaquin County 222 E. Weber Ave. Rm. 202 Stockton, CA 95202	District Attorney, Yolo County 301 2 nd Street Woodland, CA 95695
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, San Luis Obispo County 1035 Palm St, Room 450 San Luis Obispo, CA 93408	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, San Mateo County 400 County Ctr., 3 rd 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, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Contra Costa County 900 Ward Street Martinez, CA 94553	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 95701-4620	District Attorney, Santa Clara County 70 West Hedding Street San Jose, CA 95110	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	San Jose City Attorney's Office 200 East Santa Clara Street, 16 th Floor San Jose, CA 95113
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Monterey County Post Office Box 1131 Salinas, CA 93902	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Napa County 931 Parkway Mall Napa, CA 94559	District Attorney, Sierra County PO Box 457 Downieville, CA 95936	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Nevada County 110 Union Street Nevada City, CA 95959	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Humboldt County 325 5th Street 4 th Floor Eureka, CA 95501	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Imperial County 740 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Sonoma County 600 Administration Drive, Room 212J Santa Rosa, CA 95403	
District Attorney, Inyo County 130 W. Line Street Bishop, CA 93514	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Stanislaus County 832 12 th Street, Ste 300 Modesto, CA 95354	
District Attorney, Kern County 215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Riverside County 3960 Orange Street Riverside, CA 92501	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991	
District Attorney, Kings County 400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Sacramento County 901 "G" Street Sacramento, CA 95814	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Lake County 55 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2 nd Floor Hollister, CA 95023	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Lassen County 20 South Lassen Street, Ste. 8 Susanville, CA 96130	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004	District Attorney, Tulare County 221 S. Mooney Blvd., Room 224 Visalia, CA 93291	

Michael Freund & Associates

1919 Addison Street, Suite 105

Berkeley, CA 94704

Voice: 510.540.1992 • Fax: 510.540.5543

Michael Freund, Esq.

Ryan Hoffman, Esq.

OF COUNSEL:

Denise Ferkich Hoffman, Esq.

November 12, 2013

VIA CERTIFIED MAIL

Shue Wing Chan, President & CEO
Tri-Union Seafoods, LLC dba
Chicken of the Sea International
9330 Scranton Road, Suite 500
San Diego, CA 92121

VIA PRIORITY MAIL

District Attorneys of All California Counties
and Select City Attorneys
(See Attached Certificate of Service)

Office of the California Attorney General
Proposition 65 Enforcement Reporting
1515 Clay Street, Suite 2000
P.O. Box 70550
Oakland, CA 94612-0550

Re: Notice of Violations of California Health & Safety Code Section 25249.5 et seq.

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent The Chemical Toxin Working Group, Inc., (“CTWG”) a California non-profit corporation dedicated to reducing the amount of chemical toxins in consumer products. CTWG was created by David Steinman, a committed environmentalist, journalist, consumer health advocate, publisher and author. His major books include Diet for a Poisoned Planet (1990, 2007); The Safe Shopper’s Bible (1995); Living Healthy in a Toxic World (1996); and Safe Trip to Eden: Ten Steps to Save the Planet Earth from Global Warming Meltdown (2007). Through this Notice of Violation, CTWG seeks to reduce and/or eliminate exposures to cadmium ingested by consumers from oysters.

This letter constitutes notification that Tri-Union Seafoods, LLC, dba Chicken of the Sea (“Chicken of the Sea”) has violated the warning requirement of Proposition 65, the Safe Drinking Water and Toxic enforcement Act (commencing with Section 25249.5 of the Health and Safety Code). The product subject to this Notice of Violation and the chemical in the product identified as exceeding allowable levels are:

Chicken of the Sea Whole Oysters - Cadmium

Chicken of the Sea has manufactured, marketed, distributed and/or sold the above product which has exposed and continues to expose numerous individuals within California to cadmium. This chemical was listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer on October 1, 1987 and as a chemical known to cause developmental toxicity, and

male reproductive toxicity on May 1, 1997. These violations have occurred every day since at least November 12, 2010, as well as every day since the product was introduced into the California marketplace and will continue every day until cadmium is removed from the noticed product, reduced to allowable levels or until clear and reasonable warnings are provided. The primary route of exposure has been through ingestion but may have also occurred through inhalation and/or dermal contact.

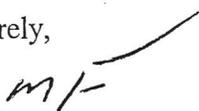
Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to certain listed chemicals. Chicken of the Sea is in violation of Proposition 65 because the company failed to provide a warning to consumers that they are being exposed to cadmium. While in the course of doing business, the company is knowingly and intentionally exposing consumers to this chemical without first providing a clear and reasonable warning. (Health and Safety Code § 25249.6.) The method of warning should be a warning that appears on the product's label. (Cal. Code Regs., tit. 27, § 25603.1, subd. (a).) Chicken of the Sea has not provided any Proposition 65 warnings on the company's label or any other appropriate warnings that persons handling, ingesting and/or otherwise using this product are being exposed to cadmium.

Proposition 65 requires that notice and intent to sue be given to a violator 60-days before the suit is filed. With this letter, CTWG gives notice of the alleged violations to the noticed party and the appropriate governmental authorities. This Notice of Violation covers all violations of Proposition 65 that are currently known to the noticing party from information now available. CTWG is continuing its investigation that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, and referenced as Appendix A, has been provided to the noticed party.

CTWG is interested in a prompt resolution of this matter with an enforceable written agreement by Chicken of the Sea to (1) eliminate or reduce cadmium levels to allowable levels, or provide appropriate warnings on the labels of this product; and (2) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures and expensive and time consuming litigation.

If you have any questions, please contact my office at your earliest convenience.

Sincerely,



Michael Freund

cc: The Chemical Toxin Working Group, Inc.

Attachments:

Certificate of Merit

Certificate of Service

OEHHA Summary to Chicken of the Sea, International

Additional Supporting Information for Certificate of Merit (to Attorney General only)

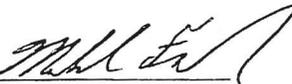
CERTIFICATE OF MERIT

**Re: The Chemical Toxin Working Group Inc.'s Notice of Proposition 65 Violations
by Tri-Union Seafoods, LLC dba Chicken of the Sea International, Inc.**

I, Michael Freund hereby declare:

1. This Certificate of Merit accompanies the attached Notice of Violation in which it is alleged that the party identified in the Notice has violated Health and Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party The Chemical Toxin Working Group, Inc. The Notice of Violation alleges that the party identified has exposed persons in California to the listed chemical that is the subject of this Notice. Please refer to the Notice of Violation for additional details regarding the product name(s) and alleged violations.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the subject of this Notice. I have reviewed the laboratory testing results for the chemical subject to this Notice and relied on these results. The testing was conducted by a reputable testing laboratory by experienced scientists. The facts, studies or other data derived through this investigation overwhelmingly demonstrate that the party identified in the Notice of Violation exposes persons to the listed chemical that is the subject of this Notice.
4. Based on the information obtained through these consultants and on other information in my possession, I believe there is sufficient evidence that human exposures exist from exposure to the listed product from the noticed party. Furthermore, 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 plaintiff's 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.
5. The copy of this Certificate of Merit served on the California Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & 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: November 12, 2013



Michael Freund
Attorney for The Chemical Toxin Working
Group, Inc.

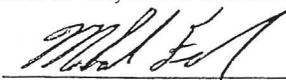
CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the County of Alameda. I am over the age of eighteen years and not a party to the within entitled action. My business address is 1919 Addison Street, Suite 105, Berkeley, California 94704. On November 12, 2013 I served the within:

Notice of Violation By Tri Union Seafoods, LLC dba Chicken of the Sea International for Violation of California Health & Safety Code Section 25249.5 et seq. and Certificate of Merit (Supporting Documentation sent to Attorney General only)

on the parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box in Berkeley, California addressed to the names set forth on the Notice of Violation and on the attached Service List.

I, Michael Freund, declare under penalty of perjury that the foregoing is true and correct. Executed on November 12, 2013 at Berkeley, California



Michael Freund

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Los Angeles County 210 West Temple Street, Suite 18000 Los Angeles, CA 90012	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Francisco County 850 Bryant Street, Suite 322 San Francisco, CA 94103	District Attorney, Ventura County 800 South Victoria Ave, Suite 314 Ventura, CA 93009
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Joaquin County 222 E. Weber Ave. Rm. 202 Stockton, CA 95202	District Attorney, Yolo County 301 2 nd Street Woodland, CA 95695
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, San Luis Obispo County 1035 Palm St, Room 450 San Luis Obispo, CA 93408	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, San Mateo County 400 County Ctr., 3 rd 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, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Contra Costa County 900 Ward Street Martinez, CA 94553	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Santa Clara County 70 West Hedding Street San Jose, CA 95110	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	San Jose City Attorney's Office 200 East Santa Clara Street, 16 th Floor San Jose, CA 95113
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Monterey County Post Office Box 1131 Salinas, CA 93902	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Napa County 931 Parkway Mall Napa, CA 94559	District Attorney, Sierra County PO Box 457 Downieville, CA 95936	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Nevada County 110 Union Street Nevada City, CA 95959	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Sonoma County 600 Administration Drive, Room 212J Santa Rosa, CA 95403	
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Stanislaus County 832 12 th Street, Ste 300 Modesto, CA 95354	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Riverside County 3960 Orange Street Riverside, CA 92501	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Sacramento County 901 "G" Street Sacramento, CA 95814	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2 nd Floor Hollister, CA 95023	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Lassen County 220 South Lassen Street, Ste. 8 Susanville, CA 96130	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004	District Attorney, Tulare County 221 S. Mooney Blvd., Room 224 Visalia, CA 93278	