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Private Enforcer and Complainant
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60 DAYS DURATION LIMIT, PLUS FIVE DAYS FOR MAILING, FROM DATE OF MAILING, FOR STATE ATTORNEY GENERAL'S OFFICE TO PROCEED. THEREAFTER, PRIVATE ENFORCER CITIZEN CAN PROCEED JUDICIALLY.

MAY 24, 2010

Michael Joseph Silveira
Senior Vice-President, Chief Accounting Officer, Chief Executive Officer
Attorney at Law - State Bar Number 101358; 12/01/1981
[Agent For Service - as per California Secretary of State file]
Robert M. Piccinini
[named violator of Proposition 65]
Chief Operating Officer and Sole Owner
Doing Business as Lucky Stores, Incorporated
[named violator of Proposition 65]
a Delaware Corporation
[California Secretary of State File Number C1194426, as of 11/26/1986]
[Operating 70 Stores in North-western California]
1800 Standiford Avenue
Modesto CA 95350
[Mailing address of: P O Box 3689, Modesto CA 95352]
(209) 548-6503
mike@savemart.com

NOTICE OF VIOLATION

CALIFORNIA SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT; CHEMICAL: POLYCHLORINATED BIPHENYLS ("PCBs"); SOURCE: FARMED SALMON

Pursuant to California Health and Safety Code, section 25249.7(d)

To Robert M. Piccinini, as individually named, and Lucky Stores, Incorporated - TAKE NOTICE:

This Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act, as related to the chemical known as Polychlorinated biphenyl, is provided to you pursuant to, and in compliance with, California Health and Safety Code, section 25249.7(d).

For general information regarding the California Safe Drinking Water and Toxic Enforcement Act, as extensively itemized within this Notice, as attached, hereinafter, there includes, but is not limited to, the summary provided by the California Environmental Protection Agency ("EPA").

This Notice of Violation of the California Safe Drinking and Toxic Enforcement Act is provided by Trent Jason, an individual, who was a consumer of the product, and, thereupon an injured party, and, thereupon one of a class of persons who seeks injunctive relief for the Proposition 65 Warning Notice, and for penalties from Lucky Stores, Incorporated, and for compensatory damages, and for attorney's fees, and for costs. Trent Jason is acting as complainant, and is also acting in the capacity of a Private Litigator, after making extensive attempts for Violator to simply comply with the requirements of the Proposition 65 Warning Notice, for no compensation previously demanded from violators, but where Violator, through its Risk Manager, refused, in writing to provide the statutory Warning Notice; even after being provided extensive written warnings of the intent to litigate the matter.

NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS OF VIOLATORS

The name, address, telephone number, and e-mail of the Violators are identified as:

1) Robert M. Piccinini, Chairman and Chief Operating Officer, and Sole Owner, of Lucky Stores, Incorporated, 7120 Spyglass, Modesto, CA 95356 (209) 545-3572; 2987 17 Mile Drive, Pebble Beach, CA 93953 (831) 646-8384;

2) Lucky Stores, Incorporated, a Delaware Corporation, (registered with the California Secretary of State) with an address of 1800 Standiford Avenue, Modesto, California, 95350, (209) 548-6503;

Served upon [as per California Secretary of State file's "Agent for Service of Process"]
Michael Joseph Silveira, Senior Vice-President, Chief Accounting Office, and General Counsel California State Bar number 101358; with an e-mail address of mike@savemart.com [But not used for service of this notice.

DESCRIPTION OF VIOLATION

The violation of selling farmed salmon with PCBs in Lucky Stores, Incorporated's, 70 retail grocery stores in the State of California, and in the specific geographic area of north-western California, has been occurring since November 26, 1986, being the date that Lucky Stores, Incorporated, became registered with the California Secretary of State, as per file number C1194426, filed on that November 26, 1986, date, and after California Health and Safety Code, sections 25249.5, 25249.6, 25249.7, 15249.8, 25249.9, 25249.10, 25249.11, 25249.12, and 25249.13 were enacted by the California Legislature in fiscal year 1986. These statutes are applicable to Proposition 65, as are the applicable Code of Regulations, pursuant to Title 11, Chapter 1, sections 3000 through to 3204; and Title 22, sections 12306 through to 12903. (Inapplicable parts are deleted in any set served.)

This Notice of Violation covers the "warning provision" of California Proposition 65, which is found in California Health and Safety Code Section 25249.6.

The name of the listed chemical involved in these violations is polychlorinated biphenyls ("PCBs"). Exposure to PCBs occurs from consumption of farmed salmon, which is the product identified in this notice. While PCBs are also found in wild salmon, there are in much higher levels in farmed salmon. The extent of exposure to a naturally occurring chemical found in food is not constituted an "exposure" for purpose of California Health and Safety Code, section 25249.6, to the extent that the person responsible for the exposure can show that the chemical is naturally occurring in the food. **However, "A chemical is naturally occurring to the extent the chemical did not result from any known human activity. Where a food contains a chemical, in part naturally occurring and in part added as a result of known human activity, 'exposure' can only occur as to that portion of the chemical which resulted from such human activity."** (Section 12501(a)(3) of Title 22, California Code of Regulations, in part.) (Emphasis added.) **"Where a chemical contaminant can occur naturally in a food, the chemical is naturally occurring only to the extent that it was not avoidable by good agricultural or good manufacturing practices."** (Section 12501(a)4) of Title 22, California Code of Regulations, in part.) (Emphasis added.)

The category of products causing these violations, at least as to this Notice of Violation served on Lucky Stores, Incorporated, is all from farm-raised salmon. The PCBs are concentrated in these products.

The description of the violations is as follows: The use of the farmed salmon product which was sold by Lucky Stores, Incorporated, resulted, and still results, in human exposure to PCBs, and substantially more, and in a multitude effect, than which exists in wild salmon. Thereupon, a warning notice is required pursuant to the applicable requirements of California's Proposition 65, as approved by the voting public in 1986. The route of exposure for the violation is ingestion of the farmed salmon products. These exposures occur when consumers of Lucky Stores, Incorporated, at each, and all, of its seventy retail locations (and all of which are located in north-western California), purchased, and still purchase, these products. The injuries occur when the consumers complete the purchases, and thereafter these consumers consume the farmed salmon product at the consumers' residences. No clear and reasonable warning has ever been provided as to these products regarding the carcinogenic reproductive hazards of PCBs. In fact, there has never been any type of warning at all, by Violators.

"(a) Whenever a clear and reasonable warning is required under Section 25249.6 of the Act, the method employed to transmit the warning must be reasonably calculated, considering the alternative methods available under the circumstances, to make the warning message available to alternative methods available under the circumstances, to make the warning message available in question is known to the state to cause cancer, or birth defects or other reproductive harm. Nothing in this section shall be construed to preclude a person from providing warnings other than those specified in subsections (b), (c), and (d) which satisfy the requirements of this subsection, or to require that warnings be provided separately to each exposed individual. (b) Warnings for consumer products exposures which include the methods of transmission and the warning messages as specified by this subsection shall be deemed to be clear and reasonable. A 'consumer products exposure' is an exposure which results from a person's acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service." (Section 12601(a) and (b), of Title 22, California Code of Regulations.) (Emphasis added.)

"The warnings provided pursuant to subparagraphs (1)(A) and (1)(B) shall be prominently placed upon a product's label or other labeling or displayed at the retail outlet with such conspicuousness, as compared with other words, statements, designs, or devices in the label, labeling or display as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. (4) The warning message must include the following language: (A) For consumer products that contain a chemical know to the state to cause cancer: 'WARNING: This product contains a chemical known to the State of California to cause cancer.' (B) For consumer products that contain a chemical known to the state to cause reproductive toxicity: 'WARNING: This product contains a chemical known to the State of California to cause birth defects and other reproductive harm." (Section 12601(b)(4)(A)(B), of Title 22, California Code of Regulations.) (Emphasis added.)

After very extensive two page letter was sent November 27, 2009, to Michael Joeseph Silveira, an e-mail was then sent to him on December 05, 2009, informing him of the intent to pursue a civil remedy. This was the proper person to contact for Lucky Stores, Incorporated, as the alleged Violator, as a corporation, has a current registration with the California Secretary of State, of which attorney Michael Joseph Silveira, has a California State Bar number 101358, a member of the California State Bar, and has been for over twenty-eight years, and is the person who is identified as the person for the "Agent for Service of Process." Thereupon, e-mails were sent to this in-house counsel, at mike@savemart.com. The e-mails were very extensive and where a response was sent by him on that same December 05, 2009, date. Thereafter, 10 additional e-mails were sent to him by complainant. However, on Thursday, December 17, 2009, an e-mail was sent to complainant, which read in part as follows: "Mr. Jason, I would like to reply to your email of recent, addressed to Mike Silveira. ... If you feel that we have[,] I **suggest that you contact the authorities and/or your attorney for further action on the matter. Your many communications have been received and reviewed. At this point any further communication would be considered disruptive and I would ask that you refrain from contacting any of our stores or employees regarding this matter either in person, by letter or by email. Thank You. The anchor, a symbol of stability. James J. Pucci, Ph.D., Vice President, Risk Management, 209-548-6570, FAX : 209-530-1816, email : Jim@Savemart.com"**

Thereupon, complainant responded to this person with two e-mails informing of complaint's intent to pursue a civil remedy; and then an short e-mail to Michael Joseph Silveira; with an eight page e-mail sent on December 19, 2009; then a four page letter to both persons on December 21, 2009.

Lucky Stores, Incorporated, through its counsel, and with knowledge of the substantial material facts, refuses to this day to place the required Proposition 65 Warning Notices, as represented above, even though complainant previously had asked for no compensation, directly, or indirectly, in this matter, and this was fully expressed in the highly detailed communications before the writing of the above represented James J. Pucci. The sole intent was to protect the consumer.

Save Mart Supermarkets, Incorporated, a California Corporation, file number C0274584, filed May 21, 1953, is the parent company of Lucky Stores, Incorporated. It is privately owned, with almost all of the company owned by Robert M. Piccinini, Chairman and Chief Operating Officer, who purchased Save Mart Supermarkets in 1985. Thus, he has been the owner of these businesses, and has been the sole person who profited in the amount of hundreds of millions of dollars in the sale of the farmed fish which are incorporated with high levels of PCBs.

Named Violator Robert M. Piccinini, after inheriting the business from his father and uncle, built up a billion dollar empire through Save Mart Stores, Incorporated, of which named violator, Lucky Stores, Incorporated, is a subsidiary of. Robert M. Piccinini sold enough farmed salmon so as to assist in his purchase of the Modesto Athletics and the Sacramento Solons. By May of fiscal year 2009, he became one of twelve partners in ownerships of the San Diego Padres. With a date of birth of January 21, 1942, he owns two estates, one near the corporate headquarters, at 7120 Spy Glass, Modesto, California 95356, (209) 545-3572; and the other at 2987 17 Mile Drive in Pebble Beach, California 93953, (831) 646-8384. Meanwhile the farmed salmon, with the unsafe levels of PCBs, has caused injuries to an unknown amount of persons. Robert M. Piccinini is the sole owner of Violator Lukcy Stores, Incorporated. He makes a gross income of five million and one hundred thousand dollars ($5,100,000.00) a year. Thus, he could have afforded to hire an expert in these matters to have made the determination that the warning notice was required, as a matter of law. After three months, he did absolutely nothing.

California Health and Safety Code, section 110545, represents, "Any food is adulterated if it bears or contains any poisonous or deleterious substance that may render it injurious to health of man or any other animal that may consume it." The food is not considered adulterated if the substance is a naturally occurring substance and if the quantity of the substance does not render it injurious to health. In this matter, the substance is, in part, a naturally occurring substance, and, in part, not a naturally occurring substance. The difference between the naturally occurring substance and the non-naturally occurring substance is that portion which contains the PCBs in the farmed salmon over and above the amount which is found in wild salmon. PCBs have been determined to be poisonous and a deleterious substance. Deleterious means that it is "harmful, often in a subtle or unexpected way, which renders it injurious to health or man or any other animal" that may consume the farmed salmon.

The United States Environmental Protection Agency has come out with a four page document, entitled: "Polychlorinated Biphenyls (PCBs) - Health Effects of PCBs," as seen on its Internet site of "www.epa.gov/epawaste/hazard/tsd/pcbs/effects.htm." The article represents, in part, as follows:

"PCBs have been demonstrated to cause a variety of adverse health effects. PCBs have been shown to cause cancer in animals. PCBs have also been shown to cause a number of serious non-cancer health effects in animals, including effects on the immune system, reproductive system, nervous system, endocrine system and other health effects. Studies in humans provide supportive evidence for potential carcinogenic and non-carcinogenic effects of PCBs. The different health effects of PCBs may be interrelated, as alterations in one system may have significant implications for the other systems of the body. The potential health effects of PCB exposure are discussed in greater detail below.

Cancer

EPA uses a weight-of-evidence approach in evaluating the potential carcinogenicity of environmental contaminants. EPA's approach permits evaluation of the complete carcinogenicity database, and allows the results of individual studies to be viewed in the context of all the other available studies. Studies in animals provide conclusive evidence that PCBs cause cancer. Studies in humans raise further concerns regarding the potential carcinogenicity of PCBs. Taken together, the data strongly suggest that PCBs are probable human carcinogens.

PCBs are one of the most widely studied environmental contaminants, and many studies in animals and human populations have been performed to assess the potential carcinogenicity of PCBs. EPA's first assessment of PCB carcinogenicity was completed in 1987. At that time, data were limited to Aroclor 1260. In 1996, at the direction of Congress, EPA completed a reassessment of PCB carcinogenicity, title 'PCBs: Cancer Dose-Response Assessment and Application to Environmental Mixtures' (PDF) (83 pp., 197k). In addition to Arolcor 1260, new studies provided data on Aroclors 1016, 1242, and 1254. EPA's cancer reassessment reflected the Agency's commitment to the use of the best science in evaluating health effects of PCBs. EPA's cancer reassessment was peer reviewed by 15 experts on PCBs, including scientists from government, academia and industry. The peer reviewers agreed with EPA's conclusion that PCBs are probable human carcinogens.

The cancer reassessment determined that PCBs are probable human carcinogens, based on the following information:

There is clear evidence that PCBs cause cancer in animals. EPA reviewed all of the available literature on the carcinogenicity of PCBs in animals as an important first step in the cancer reassessment. An industry scientist commented that "all significant studies have been reviewed and are fairly represented in the document". The literature presents overwhelming evidence that PCBs cause cancer in animals. An industry-sponsored peer-reviewed rat study, characterized as the 'gold standard study' by one peer reviewer, demonstrated that every assessment allowed EPA to develop more accurate potency estimates than previously available for PCBs. The reassessment provided EPA with sufficient information to develop a range of potency estimates for different PCB mixtures, based on the incidence of liver cancer and in consideration of the mobility of PCBs in the environment.

The reassessment resulted in a slightly decreased cancer potency estimate for Aroclor 1260 relative to the 1987 estimate due to the use of additional dose-response information for PCB mixtures and refinements in risk assessment techniques (e. g., use of a different animal to human scaling factor for does.) **The reassessment concluded that the types of PCBs likely to be bioaccumulated in fish and bound to sediments are the most carcinogenic PCB mixtures.**

.....

.....[S]tudies that do not demonstrate an association between exposure to PCBs and disease should not be characterized as negative studies. These studies are most appropriately viewed as inconclusive. Limited studies that produce inconclusive findings for cancer in humans do not mean that PCBs are safe.

It is very important to note that the composition of PCB mixtures changes following their release into the environment. **The types of PCBs that tend to bioaccumulate in fish and other animals and bind to sendiments happen to be the most carcinogenic components of PCB mixtures. As a result, people who ingest PCB-contaminated fish or other animal products and contact PCB-contaminated sediment may be exposed to PCB mixtures that are even more toxic than the PCB mixtures concentrated by workers and released into the environment.**

EPA's peer reviewed cancer assessment concluded that PCBs are probable human carcinogens. EPA is not alone in its conclusions regarding PCBs. The International Agency for Research on Cancer has declared PCBs to be probably carcinogenic to humans. The National Toxicology Program has stated that it is reasonable to conclude that PCBs are carcinogenic in humans. The National Institute for Occupational Safety and Health has determined that PCBs are a potential occupational carcinogen.

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The 21 page, document entitled "Proposition 65 Status Report Safe Harbor Levels: No Significant Risk Levels for Carcinogens and Maximum Allowable Dose Levels for Chemicals Causing Reproductive Toxicity," dated January 2005, was prepared and published by the "Reproductive and Cancer Hazard Assessment Section of the [California] Office of Environmental Health Hazard Assessment (OEHHA) of the California Environmental Protection Agency. This quasi-government entity is the lead agency for the implementation of the [California] Safe Drinking Water and Toxic Enforcement Act of 1986, which is commonly known as **Proposition 65 or the Act**. In that role, OEHHA has developed Proposition 65 safe harbor levels, known as "no significant risk levels," often abbreviated as **NSRLs**, for chemicals that cause reproductive toxicity. The NSRL is the daily intake level calculated to result in one excess case of cancer in an exposed population of 100,000, assuming a lifetime of a person, which has been designated as a seventy years period, in relation to exposure at the level which is in question.

Safe harbor levels may be based on risk assessments conduct outside OEHHA, as provided for in Title 22 of California Code of Regulations, sections 12705(b), 12705(c), and 12805. In some cases, these risk assessments which are conducted outside of OEHHA can expedite safe harbor development. The January, 2005, document by OEHHA provides the status of the development and adoption of intake levels calculated for all chemicals on the Proposition 65 list. In units of micrograms per day, shown as "ug/day", "Part A" of this 21 page document reports the NSRLs adopted in regulation for carcinogens, pursuant to Title 22 of California Code of Regulations at section 12705 and 12709. These levels are intended to provide "safe harbors" for persons subject to the Act, and do not preclude the use of alternative levels that can be demonstrated by their users as being scientifically valid. At page 7, from the top of the page, the 16th chemical is shown as follows:

Carcinogen	**Level (ug/day)**	**22 CCR Section**
Polychlorinated biphenyls	0.09	12705(c)

This carcinogen contaminant has been established to be in farmed salmon well above this level, such that the food product mandates that the Proposition 65 warning notice be placed, so that consumers can make an informed decision as to whether or not they should eat it. The large differences between the farmed salmon and wild salmon contaminant concentrations of polychlorinated biphenyls, commonly referred to as PCBs, is a function of their diet, which is caused by human participation. The scientific community's methods used to develop this consumption advice for PCBs is based on the potential cancer risks and on an assumption of risk additivity. Those scientific studies have proven that the consumption of farmed salmon probably will result in exposure to the persistent bioaccumulative of this contaminant with the potential for an elevation in health risks. The scientific community declares that while the risk benefit computation is complicated, consumption of farmed salmon pose risks which detract from the beneficial effects of farmed salmon consumption. Pursuant to Title 22 of the California Code of Regulations, Division 2, Part 2, Subdivision 1, Chapter 3, Article 5, "Extent of Exposure," section 12501(a)(3) **A chemical is naturally occurring only to the extent that the chemical did not result from any human activity. Where a food contains a chemical, in part naturally occurring and in part added as a result of known human activity, 'exposure' [occurs] as to that portion of the chemical which resulted from such human activity."** (Cited, in part.) (Emphasis added.)

Article 6, "Clear and Reasonable Warnings," pursuant to Title 22, Section 12601(a): "Whenever a clear and reasonable warning is required under Section 25249.6 of the Act, the method employed to transmit the warning must be reasonably calculated, considering the alternative methods available under the circumstances, to make the warning message available to the individual prior to exposure. The message must clearly communicate that the chemical in question is known to the state to cause cancer, or birth defects or other reproductive harm." (Cited, in part.) Section 12601(a)(4)(A)(B) represents, "The warning message must include the following language:
(A) For consumer products that contain a chemical known to the state to cause cancer:
WARNING: This product contains a chemical known to the State of California to cause cancer.
(B) For consumer products that contain a chemical known to the state to cause reproductive toxicity:
WARNING: This product contains a chemical known to the State of California to cause birth defects or other reproductive harm."

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BASIS OF PENALTIES SOUGHT FROM VIOLATORS

Proposition 65, which was passed as a ballot initiative in 1986, requires the State of California to develop and maintain a list of chemicals "known to the state to cause cancer or reproductive toxicity." (California Health and Safety Code, section 25249.8, subdivision (a)). Among the chemicals identified by the state as carcinogens pursuant to Proposition 65 are polychlorinated biphenyls (PCBs) (California Code of Regulations, Title 22, section 12000.) PCBs are also identified as reproductive toxins (*Ibid.*) Proposition 65 also requires that businesses provide warnings before consumers are exposed to such chemicals.

A citizen may bring an action to enforce Proposition 65 provided that (1) at least 60 days before filing a lawsuit the citizen gives notice to the alleged violator, the [California] Attorney General, the [county] district attorneys, and the city attorneys in the jurisdiction where the violation occurred; and (2) no public official has already commenced prosecution of the same violation. (Health and Safety Code, section 25249.7, subdivision (d)(1)). If found in an enforcement action to have violated the requirements of Proposition 65, a violator "shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) per day for each violation in addition to any other penalty established by law." (California Health and Safety Code, section 25249.7, subdivision (b)(1)).

Pursuant to California Health and Safety Code, section 15249.6, as to the "Required Warning Before Exposure To Chemicals Known to Cause Cancer or Reproductive Toxicity:" "No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual, except as provided in Section 25249.10."

Pursuant to California Health and Safety Code, section 15249.7:
"(a) Any person that violates or threatens to violate 25249.5 or 25249.6 may be enjoined in any court of competent jurisdiction.
(b) (1) Any person who has violated Section 25249.5 or 25249.6 shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500.00) per day for each violation in addition to any other penalty established by law. That civil penalty may assessed and recovered in a civil action brought in any court of competent jurisdiction."

Lucky Stores, Incorporated, has been operating in California, since November 26, 1986. Proposition 65 was enacted just before Lucky Stores, Incorporated, operated in California. Thus, Lucky Stores, Incorporated, has been in violation for twenty-three years and one month. Based on the statute of limitations, in the past four years with 365 days in a year, and with Violators owning and operating 70 grocery stores under the corporate name of Lucky Stores, Incorporated, there are hundreds of millions of dollars to which the Violators are liable for.

The penalties should be substantial, as an equitable monetary sum because Lucky Stores, Incorporated, has been located throughout California for very several years, and through a split up, by sales and acquisitions of stores, it operates exactly seventy stores in the proximity of the San Francisco/San Jose/Oakland area, which, within these stores' proximity is a population base of about ten million residents.

Pursuant to California Health and Safety Code, section 25249.7, subsection (b)(2): "In assessing the amount of a civil penalty for a violation of this chapter, the court shall consider all of the following:

(A) The nature and extent of the violations.
(B) The number of, and severity of, the violations.
(C) The economic effect of the penalty of the violator.
(D) Whether the violator took good faith measure to comply with this chapter and the time when these measures were taken.
(E) The willfulness of the violator's misconduct.
(F) The deterrent effect that the imposition of the penalty would have on both the violator and the regulated community as a whole.

(G) Any other factor that justice may require."

Lucky Stores, Incorporated, and Robert M. Piccinni, as the Violators owe a monetary sum of one hundred and ninety one million dollars, as follows: $2,500.00 per day, per store, $175,000.00 a day for its 70 stores per day, $63,875,000.00 per year, $191,625,000.00 for the past three years. In addition, Violators owe attorney's fees, and costs. As of this date, $4,000.00 was paid to a highly qualified, toxicologist, as an expert witness, as required for the statutory attachment to the certificate of merit. Essentially, Violators will owe two hundred million dollars upon entry of judgment, at trial.

The nature and extent of the violations are enormous. The number, and severity, of the violations involved millions of transactions. The economic effect of the penalty of the violator is applicable to this company's size. Seventy stores in the geographic area of north-western California, is within the second largest congregation of people in California, with the Los Angeles/Orange County/San Diego metropolitan area being first. Here, the violator made no good faith measure to comply with this chapter, and at no time has Lucky Stores, Incorporated, made any effort to comply. Lucky Stores, Incorporated's, attorney of record has never stated, suggested, or implied, that it was not in violation of the Proposition 65 Warning. Instead, this Agent For Service of Process, who is also General Counsel, and the Chief Financial Officer, and the Executive Vice-President, of the Violators, simply assigned the matter to the Company's alleged "risk manager," as represented above, and, as per that previously represented e-mail, this person represented that the requests for compliance were taken as an annoyance. There is the intended willfulness of the Violators' misconduct.

Lucky Stores, Incorporated, is a grocery chain which was founded in Alameda County, California. It is currently operated by Save Mart, Incorporated, in Northern California. In 1998, Lucky's parent company, American Stores, was taken over by Albertson's, Incorporated, based in Salt Lake City, and by 1999 the Lucky Brand had disappeared. In 1998, Albertson's Incorporated, had 94,000 employees, and sales of $14.69 billion, and earnings of $516.8 million. At the same time, American Stores Company, had 121,000 employees, and $19.14 billion in sales, and $280.6 million in earnings. Thereupon, Albertson's, Incorporated, created the largest supermarket chain in the United States. The combined concern operated almost 2,500 stores and generated sales of $36 billion, topping former industry leader Kroger, based in Cincinnati, and Safeway, Incorporated, based in Pleasanton, California.

Because the complainant is limited in the scope to pursue a civil remedy, based on the lack of financial resources, only Robert M. Piccinini, as an individual, and his solely owned private business, known as Lucky Stores, Incorporated, are named in this matter. However, at some point in time, Save Mart Supermarkets, Incorporated, and Albertson's Incorporated, could be named in a separate matter. The penalties in that matter are expected to surpass one hundred million dollars, based on the additional 170 supermarkets which are known to exist which are not part of the Lucky Stores, Incorporated, supermarket chain.

There was significant overlap between Albertson's and Lucky stores in Southern California and the Sacramento area. At that time, through to 1999, Lucky Stores, Incorporated operated a total of 406 stores in California, and Albertson's had about 176. By 1999 the Lucky Brand had disappeared. On January 23, 2006, Supervalu, Incorporated, CVS/pharmacy, and an investment group led by Cerberus Capital Management announced they had agreed to acquire Albertsons for $17.4 billion. Existing Albertsons stores were divided between Supervalu and the Cerberus led group. The Cerberus acquired stores became Albertsons, Limited Liability Company, which then sold its northern California and northern Nevada stores to Save Mart.

In fiscal year 2006, both Supervalu and Save Mart began re-branding some Albertsons locations as Lucky Stores, using the old logo. Save Mart acquired the Northern division of Albertsons LLC on November 27, 2006, which included the right to use the Lucky brand in the areas Albertsons LLC operated. In fiscal year 2007, Save Mart converted 72 of the acquired Albertsons stores to the Lucky name in the San Francisco Bay area. As per Lucky Stores, Incorporated's Internet site, seen at www.luckysupermarkets.com/index, which provides the address and telephone number of every one its locations, there are now only 70 stores shown as being in existence.

The Parent Company of Lucky Stores, Incorporated, is Save Mart Supermarkets. This entire parent company is owned by just one person, Robert M. Piccinini, the Chairman and Chief Operating Officer. In 1981 he was named the president of the company, and in 1985, he purchased Save Mart Supermarkets and became the Chief Operating Officer. All of the profits that are made from the sale of the farmed-salmon at Lucky Stores, Incorporated, are solely those of Robert M. Piccinini. This company was founded by his father, Mike Piccinini and his uncle, Nick Tocco, whereupon, Robert M. Piccinini took over the entire assets of the company and became the sole Violator as an individual. This one person made several millions of dollars in the sale of this product throughout the entire time Proposition 65 has been in existence and the entire time the warning notice was required.

Save Mart Supermarkets, Incorporated, owns and operates more than 240 stores in Northern and Central California and Northern Nevada under the Save Mart, S-Mart Foods, **Lucky**, and FoodMaxx banners. It was just after the 1985 purchase of Save Mart Supermarkets by Robert M. Piccinini, that it moved to its headquarters at 1800 Standiford Avenue, in Modesto, California, where it has remained during this entire time. Michael Joseph Silveira, the Agent for Process of Service, is also the Senior Vice President, the Chief Accounting Officer, and the General Council for Robert M. Piccinini who owns Save Mart Supermarkets entire chain, inclusive of Lucky Stores, Incorporated. Steven Junqueiro is the President and Chief Operating Officer. The annual revenue is over five billion dollars. Thus, these substantial penalties are a fair and equitable one, and one which is warranted based on the consideration of all the material facts represented in this notice.

In a partnership with Fleming Company, in 1986, the company opened its first two "price-impact" stores in Bakersfield, under the Food Maxx banner. In 1988, Save Mart Supermarkets, Incorporated, partnered with two other retailers to open Sunnyside Farms Dairy by-product plant in Turlock. In 1989, Save Mart Supermarkets, Incorporated, acquired 27 Fry's Supermarkets in the San Francisco Bay Area. In 1997, Save Mart Supermarkets, purchased 10 Lucky Stores in the Central Valley of California. In 2003, Save Mart Supermarkets, Incorporated, acquired 25 "Food 4 Less" stores and rebranded them FoodMaxx. In 2007, Save Mart Supermarkets acquired Albertsons stores in the Metro Sacramento area, San Francisco Bay area, and Northern Nevada, and converted them to Lucky and Save Mart Stores. Save Mart Supermarkets, Incorporated, therefore, encompasses a number of store names. It also maintains private label product brands.

The Lucky Stores, Incorporated, subsidiary, is at this time, the sole represented Violator, in this Notice of Violation. It is composed of seventy full-service grocery stores operating in the San Francisco Bay Area. But, to support its network of stores, including those of Lucky Stores, Incorporated, it has developed and built its own infrastructure of private label manufacturing facilities, distribution centers, and overland transportation. "Smart Refrigerated Transport," based in Lathrop, California, is a trucking firm that transports dry goods, frozen foods, ice, and novelties to all of Save Mart Supermarkets' stores. Thus, Robert M. Piccinini, as a personal violator, had and still has the capacity to provide warning label notices on its farmed salmon and also had, and still has, the capacity to be its own wholesaler and distributor of the farmed salmon products which are laced with PCBs.

It should be noted, that since November 03, 2004, being the day after the voters approved of Proposition 64, as requested to be passed by the Governor of the State of California, a person cannot sue on behalf of the general public under the California's Unfair Competition Act, embodied in California Business and Professions Code, section 17200, et seq. Only persons who were also injured in such wrongful, unethical, and/or illegal conduct of a defendant can sue these private businesses which operate in California. However, as to Proposition 65 cases one need not be injured, but that person cannot sue pursuant to the voters' subsequent amendment of Proposition 64, which is related to California's Unfair Competition Act, as seen in California Business and Professions Code, section 17200, et seq. However, in this matter, though, the complainant, as the Private Litigator can sue under both sets of laws of each of these Acts, as the complainant and as the Private Litigator, as he was also an injured party in this matter. There needs to be a deterrent effect that the imposition of the penalty would have on both the violator and to the benefit of the regulated community as a whole.

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In fiscal year 2003, the first ever tests of farmed salmon from United States grocery stores shows that farmed salmon are likely the most PCB-contaminated protein source in the United States food supply. On average, farmed salmon have four to sixteen times the dioxin-like PCBs found in wild salmon. PCBs are persistent, cancer-causing chemicals. Farmed salmon accumulate PCBs from the fishmeal they are fed. PCBs concentrate in oils and fat.

Extensive scientific research has proven that PCBs present serious health risks, which include neurodevelopmental risks to unborn children from material consumption of PCB-contaminated fish. An expert panel of the National Academy of Sciences, in 2003, at the National Institute of Medicine, Food and Nutrition Board, Committee on the Implications of Dioxin in Food Supply, as published in the National Academies Press, Washington, D.C., raised concerns as to the exposure of PCBs for girls and young women in the years well before pregnancy, because they are linked to brain damage and immune deficiencies for exposures in utero and in early childhood. Six of seven major epidemiology studies conducted from 1994 to 2003 showed that infants and children with higher PCB exposures during development score lower on numerous measures of neurology function, ranging from decreased I.Q. scores to reduced hearing sensitivity, as seen in Environmental Health Perspective, 2003, volume 111 (3), at pages 357 to 576, authored by Schnatz, SL, Widholm, JJ, and Rice, DC. As to children from two of these studies, the Michigan study showed higher cord blood levels of PCBs were also found to have lower body weight at birth and/or later in childhood. Lower birth rate is recognized as a risk factor for insulin resistance or Type II diabetes, high blood pressure, and cardiovascular disease later in life. Lower birth weight which is then followed by an accelerated growth rate during childhood is a significant risk factor for high blood pressure, stroke, insulin resistance and glucose intolerance. Overall, the human studies show that PCB's impair the immune system, making people more susceptible to chicken pox or infections like those of the inner ear and respiratory tract. In three independent studies, scientists tested 37 fishmeal samples of farmed salmon and found PCB contamination in almost every sample. (See the four science reports: Jacobs, M, Ferrario J. Bryne C., in Chemosphere, April, 2002; 47(2), at pages 183-191; and Jacobs MN, Covaci A, Schepens P. 2002b Investigation, seen in Environmental Science Technology, July 2002, 1; 36 (13), at pages 2797 to 2805; and Easton, MD, Luszaniak D, Von der G., in Chemosphere, February 2002, 46(7), pages 1053-74); and Canadian Food Inspection Agency CFIA 1999 - as seen online as of July 21, 2003 at www.inspection.gc.ca/english/anima/feebet/dioxe.shtml.

PCBs build up in salmon twenty to thirty times the levels in their environment and their feed, as per one study written by Jackson LJ, Carpenter SR, Manchester-Neesvig J. Stow CA, as read in Environmental Science Technology, March 2001, 1:35(5), at pages 856 to 862.

PCBs collect in fat, as opposed to muscle or other organs. And because farmed salmon are intentionally fattened, they are more qualified than wild salmon to be able to absorb more PCBs, making them a significant health hazard risk. The United States Environmental Protection Agency's health standards are derived to protect the public from cancer risks in excess of one in one hundred thousand (1 in 100,000), which means that normal expected exposures to the carcinogen would result in no more than one additional incidence of cancer per 100,000 people in the population. A cancer risk analysis published by Environmental Working Group, Incorporated, established that 10.4 million adults exceed this risk threshold by consuming PCB-laden farmed salmon, and that 800,000 adults exceed this risk level by 10-fold.

The United States Environmental Protection Agency considers PCBs to be "probable" human carcinogens. PCB levels in farmed salmon would have to drop about seventy-five to ninety percent, which is at the levels found in wild salmon, to protect heavy salmon eaters - assuming they consume two meals per week, from unsafe exposure to PCBs.

Science Magazine, in the January 9, 2004, issue, at pages, 228-229, of Volume 303, issue number 5655, published an article entitled "Global Assessment of Organic Contaminants in Farmed Salmon," which was written by six persons, includes Ronald A, Hites, as follows:

a) Ronald A. Hites *, School of Public and Environmental Affairs, Indiana University, Bloomington, IN 47405, U.S.A.;
b) Jeffrey A. Foran, Citizens for a Better Environmental, Milwaukee, WI 53202, U.S.A.;
c) David O. Carpenter, Institute for Health and the Environment, University at Albany, Rensselaer, NY 12144, U.S.A;
d) Coreen Hamilton, AXYS Analytical Services, 2045 Mills Road, Sidney, British Columbia, Canada, V8L 3S8;

e) Barbara A. Knuth, Department of Natural Resources, Cornell University, Ithaca, NY 14853, U.S.A.;
f) Steven J. Schwager, Department of Biological Statistics and Computational Biology, Cornell University, Ithaca, NY 14853.

"The annual global production of farmed salmon has increased by a factor of 40 during the past two decades. .... Salmon farms have been criticized for their ecological effects, but the potential human health risks of farmed salmon consumption have not been examined rigorously. Having analyzed over 20 metric tons of farmed salmon and wild salmon from around the world for organochlorine contaminants, we show that concentrations of these contaminants are significantly higher in farmed salmon that in wild. .... Risk analysis indicates that consumption of farmed salmon may pose health risks that detract from the beneficial effects of fish consumption. .... [S]almon are relatively fatty carnivorous fish that feed high in the food web, and as such, they bioaccumulate contaminants.
.....
We measured organochlorine contaminants in approximately 700 farmed and wild salmon (totaling -2 metric tons), collected from around the world. ....Using the data on organochlorine contaminants, we assessed the variation in contaminant loads between farmed and wild salmon and among geographic regions, and we calculated the human the sampling period; in addition, farmed Atlantic salmon fillets were purchased at supermarkets in 16 large cities in North American and Europe. .....

A total of 594 individual whole salmon were purchased from wholesalers and filleted; an additional 144 filets were purchased from retailers in Boston, Chicago, Denver, Edinburg, Frankfurt, London, Los Angeles, New Orleans, New York, Oslo, Paris, San Francisco, Seattle, Toronto, Vancouver, and Washington, D.C. Composites of fillets from whole salmon were made on the basis of the location where they were produced (farmed salmon) or purchased (wild salmon). Composites of fillets from retailers were made on the basis of the retail outlet where they were purchased. Each composite sample consisted of fillets from three salmon per location, or three fillets per retail outlet, giving 246 measurable samples. All samples were homogenized and analyzed by gas chromatographic high-resolution mass spectrometry.** Strict quality assurance and quality control procedures were followed. ** Thirteen samples of salmon feed were purchased from the European, North American, and South American outlets of the two major fish feed companies, which together have -80% of the global market for fish feed, and were analyzed above.
.....
We focused additional analysis on PCBs, dioxins, toxaphene, and dieldrin because the patters of their occurrence in farmed and wild salmon are similar to the patterns of all contaminants evaluated in this study and because an abundance of human health risk information is available for these compounds.

The average measured concentrations for these four contaminants are shown in [the included chart], as a function of location. As noted above, total PCBs, dioxins, toxaphene, and dieldrin were consistently and significantly more concentrated in the farmed salmon as a group that in the wild salmon [$F = 60.63, 26.80, 15.03$, and 32.22, with $df = (1, 64)$ for all; $P \leq 0.0003$ for all]. Salmon fillets obtained from commercial outlets in the various cities generally clustered with the farmed samples, not with the wild samples.
.....
The large differences between the farmed salmon and the wild salmon contaminant concentrations are most likely a function of their diet. Farmed salmon are fed a concentrated feed high in fish oils and fish meal, which is obtained primarily from small pelagic fishes. We analyzed 13 samples of commercial salmon feed. Although the concentrations in these feed samples were quite variable, they were generally similar to or greater than those in the farmed salmon. .....

The human health effects of the exposure to PCBs, toxaphene, and dieldrin in salmon tissues are a function of contaminant toxicity, concentrated in fish tissues, and fish consumption rates. We used the approach of the U.S. Environmental Protection Agency (EPA) to assess the comparative health risks of consuming farmed and wild salmon. .... FDA action and tolerance levels are not strictly health-based, do not address the health risk of concurrent exposure than one contaminant, and do not provide guidance for acceptable levels of toxaphene and dioxins in fish tissue. ....

The combined concentrations of PCBs, toxapene, and dieldrin trigger consumption advice for farmed salmon purchased from wholesalers and for store-bought farmed fillets. ...The methods used to develop this consumption on estimates of potential cancer risks and on assumption of risk additivity. .....

[T]his study suggests that consumption of farmed salmon may result in exposure to a variety of persistent bioaccumulative contaminants with the potential for an elevation in attendant health risks. Although the risk/ benefit computation is complicated, consumption of farmed Atlantic salmon may pose risks that detract from the beneficial effects of fish consumption.

** **"Materials and methods are available as supporting material on Science Online."**

In volume 13, Number 5, May 2005 editions of Environmental Health Perspectives, was a "Research Article" entitled "Risk-Based Consumption Advice for Farmed Atlantic and Wild Pacific Salmon Contaminated with Dioxins and Dioxin-like Compounds," by Jeffrey A. Foran, Midwest Center for Environmental Science and Public Policy, Milwaukee, Wisconsin; David O. Carpenter, Institute for Health and the Environment, University of Albany, Rensselaer, New York; M. Coreen Hamilton, from AXYS Analytical Services, Incorporated, Ltd., Sidney, British Columbia, Canada; Barbara A. Knuth, Department of Natural Resources; and Steven J. Schwager, Department of Biological Statistics and Computational Biology, Cornell University, Ithaca, New York. (With notice of who to contact with correspondence to be addressed as follows: jforan@mcespp.org; Jeffrey Foran Midwest Center for Environmental Science and Public Policy, Suite 100, 1845 North Farewell Avenue, Milwaukee WI 53202; (415) 271-7280; mcespp@mecespp.org; www.mcespp.org). The article represented:

We reported very several organic contaminants occurred at elevated concentrations in farmed Atlantic salmon compared with concentrations of the same contaminants in wild Pacific salmon [Hites et al. Science 303: 226-229 (2004)]. .....Health risks (based on a quantitative cancer risk assessment) associated with consumption of farmed salmon contaminated with PCBs, toxaphene, and dieldrin were higher than risks associated with exposure to the same contaminants in wild salmon. Here we present information on cancer and noncancer health risks of exposure to dioxins in farmed and wild salmon. The analysis is biased on a tolerable intake level for dioxin-like compounds established by the World Health Organization and on risk estimates for human exposure to dioxins developed by the U.S. Environmental Protection Agency. Consumption of farmed salmon at relatively low frequencies results in elevated exposure to dioxins and dioxin-like compounds with commensurate elevation in estimates of health risk. *Key Words*: dioxins, risk-based consumption advice, salmon. *Environ. Health Perspect* 113:552:556 (2005).

All samples were shipped to the analytical laboratory (AXYS Analytical, Sidney, British Columbia, Canada) fresh or frozen on ice packs. Fish were thawed and inspected by a fisheries biologist to verify species. Each fish was weighed and its length measured; then it was filleted to give two skin-on fillets. We analyzed skin-on fillets because most salmon are sold at retail outlets with the skin on. In each case, the fillets from three fish were ground and reground together to make a homogeneous composite. We used U.S. E.P.A. methods (U.S. EPA 1994, 1999) to measure dioxin and dioxin-like PCB congeners (Hites et al. 2004a). All methods were based on gas chromatographic high-resolution mass spectrometry with isotopically labeled internal standards. ... Analysis were conducted in accordance with AXYS's accredited quality assurance/quality control program as described et al (2004a). .... We also assessed cancer risk associated with DLC exposure by using the U.S. EPA's draft cancer slope factor for dioxins of 1 x 10-3/pg TEQ/kg/day (U.S. EPA 2002). ...All risk-based fish consumption rates were developed assuming an average meal size of 227g (0.5 lb), consistent with U. S. EPA (2004) risk assessment methods for contaminants in fish from each farming region, city, and species of wild Pacific salmon as reported by Hites et al (2004a). Location-specific, risk based meal consumption rates for farmed and wild salmon are presented in Figure 1. To limit DLC intake to the lower end of WHO TDI (1 pg TEQ.kg/day), **most farmed salmon must be consumed at rates of < 10 meals/month.** .... **Consumption rates are directly related to contaminant concentrations in the tissues of farmed and wild salmon. DLC concentrations are significantly and considerably higher in farmed salmon than in wild salmon.** .....**To achieve a cancer risk of 1 x 10-5 (the middle of the U.S. EPA's acceptable risk range; U.S. EPA 2000), consumption of farmed Atlantic salmon must be effectively eliminated and consumption of wild salmon must be restricted generally to less than one meal per month.**

Many farmed Atlantic salmon contain dioxin concentrations that, when consumed at modest rates, pose elevated cancer and noncancer risks." (Emphasis added.)

In volume 135, at pages 2639 to 2643, of the November, 2005, issue of American Society of Nutrition's Journal of Nutrition, exists a science article in relation to "Nutrient Interactions and Toxicity" entitled "Quantitive Analysis of the Benefits and Risks of Consuming Farmed and Wild Salmon", written by the writers of the above represented article, being Jeffrey A. Foran, David O. Carpenter, M. Coreen Hamilton, Barbara A. Knuth, Steven J. Schwager; and, with an additional writer, David H. Good of the School of Public and Environmental Affairs, Indiana University, Bloomington, Indiana. It is written, in part, in that article, as follows:

"A benefit-risk ratio was developed that compares cancer and noncancer risks associated with cumulative exposure to organic contaminants in salmon with the quantities of (n-3) fatty acids, measured as eicosapentaeonic acid (EPA) and docosahexaenoic acid (DHA) that result from salmon consumption. The ratios were derived from 245 composite samples (3 fillets each) collected in 2001 (1). The data included 153 observations from framed salmon purchased from wholesalers, 48 from fillets in farmed salmon from retail markets in 16 cities, and 44 from wild-caught Pacific salmon. The risk portion of the benefit carcinogenic risk ration (BCRR) and benefit noncarcinogenic risk ration (BNRR) is based on the methods of the U. S. Environmental Protection Agency [U.S. EPA] for developing fish consumption advisories. Quantitative estimates of carcinogenic risk associated with exposure to PSBs, dioxin, dieldrin, and toxaphene, in farmed and wild salmon were presented previously (1,4). For this analysis, we developed quantitative estimates of cumulative carcinogenic risk for a majority of the contaminants reported by Hites et al. (1) in farmed Atlantic and wild Pacific salmon. (Table 1). Cumulative carcinogenic risk was expressed as a probability of additional (above background) deaths from cancer associated with lifetime exposure to mixtures of organic contaminants in salmon for which cancer slope factors (Table 1) were established by the U.S. EPA (20). An acceptable risk level for carcinogens was established as 1 x 10-5 increased probability of death from cancer, the middle of the U.S. EPA's acceptable cancer risk range (21)."

"**RESULTS** - Both farmed and wild salmon can be consumed at rates that provide at least 1 g/d EPA+DHA per unit noncarcinogenic risk. (Fig. 1). However, there are clear differences in the benefit-risk ratio for noncarcinogens among wholesale farmed salmon, farmed salmon fillets purchased from retail markets, and wild salmon ($P<0.0001$). **Based on the benefit-noncarcinogenic risk ratio, wild salmon can be consumed at rates that approach the higher levels of (n-3) fatty acid intake recommended by the WHO (28) and AHA (7).** ..... **When salmon are consumed at rates that provide 1 g/d EPA+DHA, cumulative cancer risk for farmed salmon is 24 times the acceptable cancer risk level, whereas the cumulative cancer risk for wild salmon is only 8 times the acceptable risk level."** (Emphasis added.)

SUMMARY

As per "Proposition 65 Status Report Safe Harbor Levels: No Significant Risk Levels (NSRLs) for Carcinogens and Maximum Allowable Dose Levels for Chemicals Causing Reproductive Toxicity" dated January, 2005, as published by the Reproductive and Cancer Hazard Assessment Section of the Office of Environmental Health Hazard Assessment (OEHHA) of the California Environmental Protection Agency, as the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65 or the Act), that in this role, OEHHA has developed this "Status Report for Save Harbor Levels" for carcinogens and maximum allowable dose levels for chemicals that cause reproductive toxicity. **The NSRL is the daily intake level calculated to result in one excess case of cancer in an exposed population of 100,000, assuming lifetime (70-year) exposure at the level in question. Because the scientific evidence has proven that wild salmon causes 6 excess deaths per 100,000 persons in a life span of seventy years, and where farmed salmon causes 24 excess deaths per 100,000 persons in a life span of seventy years, then, therefore, farmed salmon causes 18 excess deaths per 100,000.00 more than wild salmon. Taking into consideration that, as per Article 5, as related to the "Extent of Exposure," in Title 22, section 12501(a)(3): "A chemical is natural occurring only to the extent that the chemical did not result from known human activity. Where a food contains a chemical, in part naturally occurring and in part added as a result of known human activity, 'exposure' can only occur as to that portion of**

the chemical which resulted from such human activity." Because the NSRL daily intake level calculated to result in one excess case of cancer in an exposed population of 100,000, assuming lifetime (70-year) exposure at the level in question, has been proven to be 18 times this level in farmed salmon over wild salmon, then the Proposition 65 Warning Notice is to be applied, as mandated by statute, and, thereupon, there is no legal defense applicable in relation to a failure to do so. Here, where the violators provide their own Risk Assessment representative, who represents that he has a Ph.D., the violators refusing to comply, after being asked to do so by the complainant, as per a written notice to the violator by that Risk Assessment expert, then the unlawful conduct is deemed to have been ratified by the violators. The daily penalty of $2,500.00 per day, per violator, is, therefore, applicable here.

NOTATION AS TO AXYS ANALYTICAL SERVICES, LTD.'S QUALIFICATIONS AS THE TESTING ENTITY

It is noted that **AXYS Analytical Services, Ltd., 2045 Mill Road West, Sidney, British Columbia, V8L 5X2 Canada laboratory telephone number of (250) 655-5800, has an ongoing, annually renewed "Certificate of NELAP Accreditation," through the California State Environmental Laboratory Accreditation Program Branch, certificate number 01138CA, with an expiration date of April 30, 2010, of which "Certificate is granted in accordance with provisions of Section 100825, et seq. of the [California] Health and Safety Code," and is seen represented as being signed by "George C. Kulasingam, Ph.D., Chief, Environmental Laboratory Accreditation Program Branch, Richmond, California." All of the testing of farmed salmon in all of these scientific reports by all of these scientists is from this company at this location, of which farmed salmon products were delivered at that address.**

AXYS Analytical Services, Ltd, provides analytical results with consistency, accuracy, and defensibility, achieved through its rigorous system which includes documented policies and procedures relating to all aspects of its operation. All samples are analyzed in batches containing quality control samples. The policies meet or exceed ISO 17025 standards. The analytical process which AXYS employ are audited internally and externally on a frequent basis by multiple accredited bodies and clients. ISO/IEC 17025:2005 "General Requirements for the Competence of Testing and Calibration Laboratories" is an international standard that specifies the management and technical requirements for competence to perform test measurements and calibrations, as published by the International Organization for Standardization (ISO) and the International Electro technical Commission (IEC). The New York State Department of Health and the Florida Department of Health conduct comprehensive laboratory audits bi-annually to monitor the company's compliance with both program specific and ISO17025 quality system requirements.

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ADDITIONAL DISCLOSURE/NOTICE TO PROPOSTION 65 VIOLATOR THAT CAPACITY FOR SETTLEMENT BELOW $21,062,500. MAY BE PROHIBITED BY LAW

Robert M. Piccinini, is the alter-ego of Lucky Stores, Incorporated, as they are one and the same, with the corporate name being the fictitious business name of Robert M. Piccinini, as he is the only owner of the corporation, and it being a private company, and there being no shareholders, and, therefore, all liability insurance is believed to cover each and both of them equally. The company's risk management representative has formally, in a written statement, provided to complainant/ Private Litigator notice that there is the refusal to provide the statutory Proposition 65 Warning Notice(s), even through Complainant offered Lucky Stores, Incorporated, to do so without any funds or monetary compensation payable to Complainant if there was such immediate compliance/ Now that Complainant has served this 60 Days Notice upon Lucky Stores, Incorporated, it is possible that Lucky Stores, Incorporated, will now agree to comply with the statutory Proposition 65 Warning Notice(s). **However this is now a moot point: "The fact that a defendant changed its conduct prior to entry of a court order or judgment does not preclude a finding that the plaintiff was successful. If the plaintiff's action was the cause or 'catalyst' of the change in conduct, the plaintiff may be deemed successful."** (Title 11, California Code of Regulations, section 3201(a).) (Emphasis added.)

Complainant in this matter, may be prohibited from any monetary settlement of penalties below the applicable monetary sum , because of the "Objection" filed by the California State Attorney General, served and filed on September 04, 2007, in the matter of Whitney R. Leeman, Ph. D. versus Burger King Corporation; CKE Restaurants, Incorporated, et al, case number 6AS02168, Superior Court of California, County of Sacramento, with Honorable Shelley-Anne Chang presiding. In that matter, the Supervising Deputy Attorney General, Edward G. Weil, who is now a trial judge of the Superior Court, filed "Attorney General's Objections to Joint Motion for Approval of Proposition 65 Settlement and [Proposed] Consent Judgment." The action was filed May 27, 2006, and the law and motion matter was scheduled for September 17, 2007.

The Objection was introduced on the basis that, in 2001, the California Legislature amended Proposition 65 to assure that settlements of private Proposition 65 matters meet certain criteria, even if the settlement is agreed to by both the plaintiff(s) and the defendant(s); and, even if the parties to the matter agree that the settlement is "reasonable" under California law, as mandated by California Health and Safety Code, section 25249.7, subdivision (f)(4)(B). The Objection raised the fact that the California Courts of Appeal have applied the statute to assure that the requirements of the statute are met, and to require that, even where the statutory criteria are met, the settlements also are just and serve the public interest. The Objection referred to two published opinions of the California Appellate Court, being Consumer Advocacy Group, Inc. versus Kintetsu Enterprises of America (July 06, 2006) 144 Cal.App.4th 46; 34 Cal.Rptr.3d 637; 2006 Cal.App.LEXIS 1041; and Consumer Defense Group versus Rental Housing Industry Members (March 24, 2006) 137 Cal.App.4th 1185; 40 Cal.Rptr.2d 832; 2006 Cal.App.LEXIS 407.

Based on the record of Lucky Stores, Incorporated, and as to the penalties sought, and the basis for them, the settlement for any monetary sum less than the maximum allowed should not be approved, without mitigating factors proven by the Violators, because it would not serve the public interest. The Objection raised the point that in relation to settlement approval requirements, it was the California Legislature which adopted the settlement approval requirements. The penalty amount must be reasonable based on the criteria set forth in the penalty provision. The plaintiff must produce the evidence necessary to sustain the findings. The California Attorney General must be served with all moving supporting papers and is permitted to appear in the matter without intervening. The courts have always had the authority to reject settlements which contain provisions that violate law or public policy. The settlement must be consistent with the public interest.

In the Objection, the California Attorney General noted that it has adopted Settlement Guidelines, which advise litigants, and the courts, of the California Attorney General's views and policies in reviewing proposed settlements, as per, California Code of Regulations, Title 11, at sections 3000-3203. The Settlement Guidelines address a number of issues that arise frequently in settlements, including appropriate penalties and "payments in lieu of penalties." These regulations are intended to "assist the parties in fashioning a settlement to which the California Attorney General is unlikely to object, while also assisting the court in determining whether to approve settlements."

In the California Attorney General's Legal Argument in that Objection, the California State Attorney General's Office noted that, under the Statute, "the plaintiff is entitled to keep 25% percent of the penalty awarded, no questions asked. (Health and Safety Code, section 25249.7,12 [sic: 25249.12], subd. (d).)" Thereupon, it is that monetary amount equivalent to twenty-five percent of all civil and criminal penalties collected, pursuant to this chapter, must be paid, as a matter of law, that is without discretion by the court, which is to be paid in an action brought by a person identified in subdivision (d) of section 25249.7, to that person, as per section 25249.12(d).

However, this only leaves a seventy-five percent balance from all of the civil and criminal penalties collected pursuant to this chapter to be deposited in the California Safe Drinking Water and Toxic Enforcement Fund. Based on the above represented conduct of Lucky Stores, Incorporated, anything less than this 75 percent, being the remainder balance, is simply not in the public's best interest. While it is true the complainant, as a Private Litigant, would earn a windfall, in the monetary amount of twenty-five percent of these penalties and of which funds are tax free because penalties, unlike punitive damages, are tax free. However, in the alternative, it would be adverse to the State if claimant were to settle for anything less, but without it being designated as "assessed penalties,"

and agreed upon by a plaintiff in the capacity of a Private Litigant, against a defendant, as the California Safe Drinking Water and Toxic Enforcement Fund would receive nothing. While a plaintiff would receive one hundred percent in a settlement, without designation of any "assessed penalties," and, of which the defendant(s), as Violator(s) would probably agree to because in doing so defendant(s) is(are) able to avoid an additional monetary sum more through the applicable penalties, such a settlement would, thereupon, go against public policy.

Any private person proceeding "in the public interest" pursuant to Health and Safety Code section 25249.7(d), or brining any other action (hereinafter "Private Enforcer"), who alleges the existence of violations of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Health and Safety Code sections 25249.5 or 25249.6) (hereinafter "Proposition 65"), shall comply with the applicable requirements of this Chapter of Title 11 - Department of Justice, Division 4 - Proposition 65 Private Enforcement. It is the responsibility of the Private Enforcer to serve the proposed settlement on the Attorney General with a "Report of Settlement" in the form set forth on the electronic filing data collection system which is on the Internet, and is mandated by law to be used.

No settlement is permitted without the consent or, alternatively, with the objection by the State of California Attorney General, or its Deputy Attorney General, or some other person authorized to consider the settlement. It must be served within five days after the action is "Subject to a Settlement," or concurrently with service of the motion for judicial approval of settlement pursuant to Health and Safety Code section 25249.7(f)(4), whichever is sooner. The motion and all supporting papers and exhibits are mandated to be served on the California Attorney General no later than forty-five days prior to the date of the hearing of the motion. The submission to the California Attorney General must contain the entire agreement between the parties. The papers filed with the court must advise the court that the fact that the California Attorney General does not object or otherwise has not responded to the settlement. But the court must also be advised in that settlement filing with the court that the lack of an objection by the California Attorney General shall not be construed as endorsement of or concurrence in any settlement. The Attorney General has thirty days after actual receipt of the settlement to review it, and during that time, that settlement shall not be submitted t the court, unless there is a written statement of no objection by the Attorney General. **THIS PARAGRAPH MUST BE IN ALL PROPOSED SETTLEMENT AGREEMENTS WHICH THE COURT IS TO CONSIDER.**

It is not conceivable that the California State Attorney General's office would accept a settlement for less than what complainant is seeking, payable to the **CALIFORNIA SAFE DRINKING WATER AND TOXIC ENFORCEMENT FUND**. After all, one of the things that a Private Enforcer does, which ends up being a substantial benefit to the Violator, if a settlement is obtained through the efforts of the Private Enforcer, is it places a "res judicata" effect on the violator. The plaintiff could obtain a large sum of money, without the word "penalties" applied, and whereupon, the plaintiff, as the Private Enforcer, keeps all of the funds of the settlement while the general public loses all rights to future litigation against the Violator(s). Obviously, then, the Violator(s) could bargain for as much future immunity for Proposition 65 litigation as the law could arguably confer, as a "Consent Judgment" would have res judicata and collateral estoppels effect to the extent allowed by law with regard to the Proposition 65 allegations outlined in the Private Enforcer's complaint.

Thus, if such a settlement were even agreed to by the parties, the California Attorney General would be a party whose interests would be "injuriously affected by such a judgment." Therefore, and as per the published opinion of the California Appellate Court, the California Attorney General has a right to appeal. The California Attorney General's right to "participate" in a "proceeding" would be meaningless if it carried no inherent right to appeal. **The California Attorney General, is expected to appeal settlements and "Consent Judgments" where the violator of California Proposition 65 requirements is insulated by way of res judicata or collateral estoppels. Analogous federal law is applicable where it is necessary to prevent private enforcement actions from ending up as being unfair and unreasonable to the general public. Congress recognized the obvious danger that unlimited public actions might disrupt the implementation of the Act and overburden the courts, and, thereupon, it placed explicit restrictions on citizen suits. Regulations have specific required content for such notices since 1997.**

And as to any settlement, for the Fund not to receive at least $15,000,000.00, for example, would go strongly against public policy, as there have been substantial injuries sustained by the general public based on Lucky Stores, Incorporated's conduct, as represented above.

"In Proposition 65 cases, however, there typically is no award of damages or other unrestricted funds to the plaintiff (other than the plaintiff's 25% of any civil penalty recovery)." (Title 11, California Code of Regulations, section 3201(f). Thus, a plaintiff Private Litigant and a defendant Violator cannot avoid payment to the fund of three times the amount which a plaintiff Private Litigant could settle for with defendant Violator, simply by plaintiff Private Litigant and defendant Violator agreeing to a settlement whereby a plaintiff Private Litigant receives a large amount of money from defendant Violator, but where a defendant Violator saves three times that amount by there being no identified "penalty" assessment included. By such conduct the Fund would receive nothing. This goes against public policy for four reasons:

1) It may not deter a defendant's-Violator's conduct, whereupon the defendant-Violator can avoid statutory compliance(s) of the Proposition 65 Warning Notice(s);
2) The Fund would receive nothing while a plaintiff Private Litigator would receive all of the settlement money, which goes against public policy and against law for the fund not to receive three times (75% of the total monetary settlement amount) what a plaintiff receives;
3) A Private Enforcer could utilize this type of litigation simply as a way to extort funds from and violator defendant; and
4) under California law, such a settlement forecloses on any further litigation against a defendant Violator based on the legal theory of res judicata. Therefore, as per Title 11, California Code of Regulations, section 3203(a) where civil penalties of which 75% of which must be provided to the Department of Toxic Substances Control, to be deposited into the California Safe Drinking Water and Toxic Enforcement Fund. It would be against public policy for a settlement agreement between a Private Enforcer/plaintiff and a Violator/defendant to design and implement a scheme whereupon, solely for personal reasons of these parties, the penalties are "traded" for payments.

The court has ruled that "Both class action litigation and Proposition 65 litigation affect the interests of the unrepresented persons - either unrepresented class members or unrepresented members of the general public. The 'fair, reasonable, and adequate' test derives from rule 23 of the Federal Rules of Civil Procedure (Title 28 of the United States Code). A court cannot validly enter a judgment or order which is void, even if the parties agree to it. In the context of Proposition 65 litigation, necessarily brought to vindicate the public interest. The trial court also must ensure that its judgment serves the public interest. A plaintiff may be nothing more than a shell entity for lawyer bounty hunters who come in after the complaint is filed, if they had no filed it themselves."

This highly detailed and organized thirty page long "Notice of Violation" is what a would-be private enforcer is expected to do: To inform the alleged violator and, at the same time to inform the relevant prosecutorial authorities; inclusive of the California Attorney General, the applicable County District Attorneys, and the applicable City Attorneys of cities which maintain a population base of 750,000 residents, or more. It provides the Violator, and the applicable prosecuting authorities, the opportunity to each undertake a meaningful investigation and to instigate remedial action prior to the filing of the litigation by the Private Enforcer. The Notice of Violations which is sent to each of these parties must not fail to state sufficient specific facts to enable the alleged Violator(s), and the appropriate governmental agencies, to undertake a meaningful investigation and remedy the alleged violations prior to citizen intervention. To fail to accomplish such information in a formal, detailed explanatory manner, would warrant the Violator to file a motion to demur which the trial court would be expected to grant. In addition, such a failure of such a notice in this format would nullify the regulations which require meaningful notice to prosecutorial authorities, as it would greatly diminish the capacity for the California Attorney General to determine, in the best light possible, if he, or she, has a genuine opportunity to decide on behalf of the public whether Proposition 65 litigation is warranted in the given matter which is before it for the short six days period from the date the notice is served.

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ADDITIONAL NOTICE THAT SECTION 337(A) OF TITLE 21 OF THE UNITED STATES CODE, A PROVISION OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT (FDCA), DOES NOT PREEMPT CALIFORNIA STATE LAW IN THIS MATTER

Section 337(a) of Title 21 of the United States Code, does not preempt complainant's action, as complaint does not seek to "enforce, or to restrain violations" of the Federal Food, Drug and Cosmetic Act (FDCA). Rather, complainant's claims for deceptive marketing of food products are predicated on state laws establishing independent state disclosure requirements "identical" to the disclosure requirements imposed by the FDCA, of which was something Congress explicitly approved in section 343-1(a)(3). There is no dispute that, under California law, private parties may assert Unfair Competition Law ("UCL") claims based on violations of the applicable law. The California State Attorney General filed an amicus brief addressing the section 337 argument in the matter of **Farmed Raised Salmon Cases** (February 11, 2008) 42 Cal.4th 1077, 175 P.3d 1170; 72 Cal.Rptr.3d 112; 2008 Cal.LEXIS 1413; and with there also being subsequent history in a later proceeding seen in the United States Supreme Court, in the matter of **Albertson's Inc. v. Kanter** (2008) 129 S.Ct. 339; 172 L.Ed.2d 15; 2008 U.S.LEXIS 6737, and, thereafter, the United States Supreme Court certiorari denied by **Albertson's Inc. v. Kanter** (January 12, 2009) 129 S.Ct. 896; 173 L.Ed.2d 106; 2009 U.S.LEXIS 424.

Principles of Preemption: Under the supremacy clause of the United States Constitution, Article VI, clause 2, Congress has the power to preempt state law concerning matters within the authority of Congress. In determining whether federal law preempts state law, a court's task is to discern congressional intent. Congress's express intent in this regard will be found when Congress explicitly states that it is preempting state authority. Congress's implied intent to preempt is found (I) when it is clear that Congress intended, by comprehensive legislation, to occupy the entire field of regulation, leaving no room for the states to supplement federal law; (ii) when compliance of both federal and state regulations is an impossibility; or (iii) when state law 'stands as an obstacle to the accomplishment and execution of the full purpose and objectives of Congress. It is well established that a party who asserts that a state law is preempted bears the burden of so demonstrating.

The interpretation of the federal law at issue here is further informed by a strong presumption against preemption. Because the States are independent sovereigns in the United States federal system, the courts have long presumed that Congress does not cavalierly pre-empty state law causes of action. In all pre-emption cases, and particularly in those in which Congress has "legislated . . . in a field which the States have traditionally occupied," the court "starts with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." The courts apply this presumption to the existence as well as the scope of preemption.

There is no doubt that the presumption applies with particular force here. Consumer protection laws such as the California Unfair Law are within the states' historic police powers, and therefore are subject to the presumption against preemption. Laws regulating the proper marketing of food, including the prevention and deceptive sales practices, are likewise within states' historic powers. It is with these principles that the court determines that the "clear and manifest purpose" of Congress is not to preclude states from providing private remedies for the violations of state statutes.

Federal preemption presents a pure question of law. The words of section 343-1 clearly and unmistakably convince Congress's intent to authorize states to establish laws that are "identical to" federal law. While Congress clearly stated its intent to allow states to establish their own identical laws, it said absolutely nothing about proscribing the range of available remedies states might choose to provide for the violation of those laws, such as private actions. Nor is there anything in the legislative history suggesting that any proponent of the legislation intended a sweeping preemption or private actions predicated on requirements contained in state laws. Congress did not intend to alter the status quo. For example, states may choose to permit their residents to file unfair competition or other claims based on the violation of state laws. If Congress had intended to permit states to enact identical laws on the one hand, but preclude states from providing private remedies for violations of those

laws on the other hands, "its failure to even hint at it is spectacularly odd." Congressional silence on this point is all the more strange in light of Congress' presumed awareness that "[v]irtually every state in the nation permits one or more nongovernmental parties to enforce state . . . laws of general applicability prohibiting deceptive or unfair acts and practices in the marketplace." (Annotated, Right to Private Action Under State Consumer Protection Act - Preconditions to Action (2004) Volume 117 of American Law Review, 5th edition, page 155).

In an codified provision in the Nutrition Labeling and Education Act of 1990 ("NLEA"), Congress provided that "[t]he [NLEA] shall not be construed to preempt any provision of State Law, unless such provision is expressly preempted under [section 343-1] of the [FDCA]" (Pub. L. Number 101-535, section 6(c)(1) (November 08, 1990.) 104 Stat. 2364.) Thus, Congress's decision not to expressly supplant private claims based on those state laws authorized by section 343-1 should be interpreted as its considered decision to continue to allow states to provide such private remedies.

The language of this un-codified provision is significant for two additional reasons. First, it evidences an intent to allow state and federal regulation to coexist. "Where Congress establishes a regime of dual state-federal regulation, 'conflict-pre-emption analysis must be applied sensitively ... so as to prevent the diminution of the role Congress reserved to the States while at the same time preserving the federal role.'" During the debate on the Nutrition Labeling and Education Act of 1990, Congress recognized the important role states' laws having enforcing State food labeling and advertising laws at a time when consumers have been bombarded with health claims." (House of Representatives, Rep. Number 101-980, Second Session, Page 19 (November 14, 1990). Second, the provision's language is significant because it informs our analysis of the existence of any implied preemption. "[A]n express definition of the pre-emptive reach of a statute 'implies' - i. e., supports a reasonable inference - that Congress did not intend to preempt other matters ... ." While an express clause does not foreclose an inquiry into implied conflict preemption in all cases, deference should be paid to Congress's detailed attempt to clearly define the scope of preemption under the FDCA. "Congress has expressly identified the scope of state law it intends to preempt; hence, we infer Congress intended to preempt no more than that[,] absent sound contrary evidence."

Congress provided that section 343-1 does not apply "to any requirement respecting a statement in the labeling of food that provides for a warning concerning the safety of the food ... ." (Pub.L. Number 101-535, section 6(c)(2) (November 08, 1990) 104 Stat. 2364). It is undisputed that section 337 bars private enforcement of the FDCA. No one contends section 343-1 alters that conclusion. However, complainant does not seek to enforce the FDCA. Complainant's action is based on the violation of state law - albeit state law that is, in compliance with section 343-1, identical to FDCA provisions. Concluding that section 343-1 permits private claims based on state law does not affect section 337's preemption of efforts to enforce the FDCA.

The Food and Drug Administration has opined that because "section 337 applies only to proceedings to enforce the [FDCA]" (Title 58 Federal Regulations, section 2458 (January 6, 1993)), "[n]othing in [section 337] would preclude a State from taking action against a particular food under *its own State law* ... ." (Tile 58 Federal Regulations, section2458, italics added.) Nor does section 337 affect the ability of states to provide a private remedy for violations of their laws if they so choose. One treatise has noted that "[plaintiffs may sue under state unfair trade practice laws for omissions that would fit under either FDA or state trade laws. [Fn. omitted.]" (2 O'Reily, Food and Drug Administration (3d ed. 2007) section 26:32, p 26-43.) Rather than raising issues "committed to the FDA," complainant's claims arise under that section 343-1 explicitly authorizes states to enact. No court, particularly after passage of the NLEA, has ever held that states may not provide a private remedy for the violations of state laws imposing requirements identical to those imposed by federal law.

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In the unpublished opinion of the matter heard In the United States District Court, for the Northern District of California, case number C 08-04141 CRB, in the matter of Margot Lockwood versus Conagra Foods, Incorporated, less than a year ago, in a "Memorandum and Order" filed by the federal court, on February 03, 2009, plaintiffs had filed a putative class action under California Unfair Competition Law, pursuant to California Business and Professions Code section 17200. The Defendant moved to dismiss on the ground that plaintiffs' claims are expressly preempted by the Nutrition Labeling and Education Act and impliedly preempted by comprehensive Food and Drug Administration ("FDA") regulations under the Federal Food and Drug Cosmetic Act. In the alternative, the defendant argued that the Court should defer to the FDA under the "primary jurisdiction" doctrine and should strike the class allegations because plaintiffs cannot prove reliance on a class-wide basis. After carefully considering the parties' papers, including the supplemental briefs submitted after oral argument, the defendant's motion was denied.

In that matter, the Defendant had incorrectly suggested that the Court cannot consider the section 6(c)(1) savings clause in its preemption analysis arising from FDCA provisions that were not adopted or amended by the NLEA. Section 6(c)(2) and 6(c)(3) read:

> (2) The amendments made by subsection (a) [21 U.S.C. section 343-1(a), the express preemption provisions] . . . shall not be construed to apply to any requirement respecting a statement in the labeling of food that provides for a warning concerning the safety of the food or component of the food.
>
> (3) . . . paragraphs (1) and (2) of this subsection [NLEA section 6(c)] shall not be construed to affect preemption, express of implied, *of any such requirement* of a State of political subdivision, which may arise under . . . any provision of the Federal Food, Drug, and Cosmetic Act not amended by subsection (a).

Pub. L. No. 101-535, section 6(c)(2)(3) (21 U.S.C., section 343-1 note) (emphasis added). A fair reading of these subparagraphs is that the phrase "any such requirement" in section 6(c)((3) refers to the requirement in section 6(c)(2) - that is, "any requirement respecting a statement in the labeling of food that provides for a warning concerning the safety of the food or component of the food." See In re Farm Raised Salmon Cases, 42 Cal.4th at 1093. In other words, **the NLEA - including the savings clause (no preemption unless the law is expressly preempted) - - shall not be construed to affect the preemption of food safety laws.** Complainant's issue is not about food safety. It is about the California statutory requirement of warning consumers that a given product contains a chemical known to the State to cause cancer. Thus, NLEA section 6(c)(3) is consistent with the Court's view that Congress did not intend to preempt the entire field of food and beverage labeling. (Emphasis added.)

(In fact, although it is at the far end of the area of where the Violators' other fish products is actually displayed, and not in a conspicuous area, these Violators already have posted in its fish departments the same necessary Proposition 65 Warning Notice, but, as to mercury content, related to three other varieties of fish, including tuna.)

The court ruled in that matter of Lockwood versus Conagra Food, Inc., in that February 02, 2009, "Memorandum and Order," that "Defendant has not proved, as a matter of law, that plaintiffs' claims, if successful, make compliance with federal law a physical impossibility." The court also ruled that "nor does California law stand as an obstacle to the accomplishment and execution of the objectives of the FDCA."

In was just a few months ago, on August 12, 2009, that the United State which the Court of Appeals, in the matter of Holk versus Snapple Beverage Corporation (2009) (Third Circuit), case number 08-3060, on appeal from the United States District Court, for the District of New Jersey, District Court case number 3-07 cv-03018, which was argued June 24, 2009, that the court brought forth that Congress replaced the Wiley Act in 1938 with the Federal Food, Drug, and Cosmetic Act ("FDCA"). (Pub. L. No 75-717, 52 Stat. 1040 (1938). The court also confirmed that the FDCA authorized the Food and Drug Administration ("FDCA") to regulate food and safety labeling. Specifically, under FDCA, the FDA could "promulgate food definitions and standards of food quality;" "set tolerance levels for poisonous substances in food;" and take enforcement action on adulterated and misbranded foods.

From there, that circuit court ruled that "[W]e must begin our analysis by applying a presumption against preemption. Cipollone v. Liggett Group, Inc. 505 U.S. 504, 516 (1992). 'In areas of traditional state regulation, we assume that a federal statute has not supplanted state law unless Congress has made such an intention clear and manifest.' Bates v. Dow Agrosciences LLC, 544 U.S., 431, 449 (2005) (internal remarks omitted). This requires that, if confronted with two plausible interpretations of a statute, we 'have a duty to accept the reading that disfavor pre-emption.' *Id.; see also* Wyeth v. Levine, 129 S.Ct. 1187, 1195 (2009); Cipollone, 505 U.. at 518. **Health and safety issues have traditionally fallen within the province of state regulations. This is true of the regulation of food and beverage labeling and branding.** Plumley v. Massachusetts, 155 U.S. 461, 472 (1894) ('If there be any subject over which it would seem the states ought to have plenary control . . . it is the protection of the people against fraud and deception in the sale of food products.") The federal government did not begin to regulate the labeling of food products until 1906, when Congress passed the Wiley Act. Nonetheless, [Defendant] argues that the presumption against preemption should not be applied ...." The Supreme Court, however, rejected a similar argument in Levine and applied the presumption. 129 S.Ct. at 1195 & n.3. Accordingly, all of [Defendant's] preemption arguments must overcome the presumption against preemption, as **food labeling had been an area historically governed by state law.**" (Emphases added.)

The court continued that, "Field preemption occurs when state law occupies a 'field reserved for federal regulation,' leaving no room for state regulation. United States v. Locke, 529 U.S. 89, 111 (2000). It may also be inferred with 'an Act of Congress 'touch[es] a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.'" English v. General Elec. Co., 496 U.S. 72, 79 (1990). Nonetheless, for field preemption to be applicable, "congressional intent to supersede state laws must be 'clear and manifest.'" *Id.* First, we note that NLEA declares that courts may not find implied preemption based on any provision of NLEA. It states that **the Act "shall not be construed to preempt any provision of State law, unless such provision is expressly preempted under [21 U.S.C. section 343-1] of the Federal Food, Drug, and Cosmetic Act." Pub. L. No. 101-535, section 6(c)(1)."** ..... **Furthermore, NLEA declares that its express preemption provision "shall not be construed to apply to any requirement respecting a statement in the labeling of food that provides for a warning concerning the safety of food or compenent of the food," thereby preserving state warning laws. Pub. L. No. 101-535, section 6(c)(1). These provisions demonstrate that Congress was cognizant of the operation of state law and state regulation in the food and beverage field, and it therefore enacted exceptions in NLEA. As the Supreme Court instructed in Levine, "'[t]he case for federal pre-emption is particularly weak where Congress had indicated its awareness of the operation of state law in a field of federal interest, and has nonetheless decided to stand by both concepts and to tolerate whatever tension there [is] between then.'" 129 S. Ct. at 1200 (quoting Bonito Boats, Inc. v. Thunder Craft Boats, Inc., 489 U.S. 141, 166-167 (1989).) Furthermore, the court noted that the FDA has stated that it does not intend to occupy the field of food and beverage labeling. In "Food Labeling; Declaration of Sulfating Agents," Title 51, Federal Regulations, 25,012, 25,016 (July 09, 1986) the FDA stated: "The agency does not use its authority to preempt State requirements unless there is a genuine need to stop the proliferation of inconsistent requirements between the FDA and the States."** (Emphasis added.)

ADDITIONAL NOTICE THAT THE TRIAL COURT CAN NOT GRANT ANY SUMMARY JUDGMENT MOTION FOR THE FAILURE OF A PLAINTIFF TO PRODUCE EVIDENCE. IT IS THE BURDEN OF DEFENDANT TO PROVE NO TRIABLE ISSUE OF FACT EXISTS.

In this matter, the Violators' risk assessment "expert" employed by the Violators represented, in part, in his e-mail to the Complainant as follows: "If you have concerns regarding the product in question[,] I invite you to meet with the County Environmental Health Department and register your complaint. I'm certain the authorities at that level will answer your questions. It is our opinion that we have not violated any Federal, State or Local Laws regarding the product in question. If you feel that we have[,] I suggest that you contact the authorities and/or your attorney for further action on the matter. .... Thank You. The anchor, a symbol of stability. James J. Pucci, Ph.D - Vice President, Risk Management 209-548-6540 - Fax: 209-530-530-1816 - email: Jim@savemart.com" **It is the Defendant's responsibility to do a risk assessment, and failing to do so places liability on the Defendant.**

In the published opinion of the Court of Appeal of the State of California, Second Appellate District, Division One, Los Angeles County, in the matter known as Consumer Cause, Inc. v Smilecare (August 09, 2001) 91 Cal.App.4th 454; 110 Cal.Rptr.2d 627; 2001 Cal.App.LEXIS 628, the matter involved an appeal from a judgment and an order of the Superior Court of Los Angeles County, whereupon the court reversed the trial judge's decision. That appellate decision for reversal was supported, in part, by the California Attorney General's, and Chief Assistant Attorney General's, and Senior Assistant Attorney General's, and two Deputy Attorney General's write for the State of California as Amicus Curiae on behalf of the Plaintiff and Appellant.

The Plaintiff filed that action alleging a violation of the California Safe Drinking Water and Toxic Enforcement Act of 1986, commonly known as Proposition 65. The trial court had made serious judicial error in granting defendants' motion for summary judgment, which was based on an affirmative defense. The California appellate court concluded that the trial court misapplied the burden of producing evidence in granting the motion. The appellate court ruled that it was the defendants who had an initial burden of production to make a prima facia showing that the affirmative defense applied. Because defendants made no such showing, the burden did not shift to plaintiff to raise a triable issue. Accordingly, the appellate court reversed the trial court's decision.

The regulatory requirements are such that it is the defendant, not the plaintiff, who must perform a quantitive risk assessment which meets the standards described in the regulations to determine the maximum does level having no observable effect on a person. It is the defendant, not the plaintiff, who must produce that quantative risk assessment and to accomplish it based on studies producing the reproductive effect which provides the basis of the listed PCBs. Where multiple studies exist, the calculation for the "no observable effect level" ("NOEL"), it must be calculated from the studies which produce the lowest NOEL. The NOEL is the highest does level which results in no observable effect, expressed in milligrams of chemical per kilogram of bodyweight per day. If the assessment is based on epidemiological data, it must be evaluated for quality and suitability of data to determine whether it is an appropriate basis for assessment. If the assessment is based on animal bioassay studies, the studies must meet the generally accepted scientific principles relating to experimental protocol, manner of exposure, temporal exposure pattern, duration, etc. The NOEL must be based on the most sensitive study of sufficient quality. The NOEL must be converted to a milligram (or microgram) per day does level by multiplying the assumed human body weight by the NOEL.

Once the defendant has established the NOEL consistent with the regulations, the defendant must complete the second portion of the risk assessment and prove, through competent scientific evidence, the individual's daily exposure to the listed substance from the product at issue. Again, this is a highly technical scientific determination. The Regulations state that the level of exposure "shall be determined by multiplying the level in question (stated in terms of a concentration of a chemical in a given medium) times the reasonably anticipated rate of exposure for an individual to a given medium." Certain assumptions are to be based in calculating the reasonably anticipated rate of exposure. These include the assumptions about the amount of air that people breathe, the amount of water they drink, the normal gestation period, etc. The regulatory assumptions must be used unless more specific and scientifically appropriate data are available.

At the conclusion of this quantitive risk assessment process, the defendant will have calculated the NOEL and the exposure in question, and can determine whether the exposure in question is one thousand times the NOEL and therefore does not require a Proposition 65 warning. While the regulations specifically state that they are not exclusive, and nothing prohibits a person from using alternative evidence, standards, assessment, methodologies, principles, assumptions or levels to prove that a level of exposure is one thousand times below the NOEL, the statute makes it clear that the question is not one of anecdotal safety, but one of hard science, requiring both the calculation of a NOEL and an exposure level. In performing these calculations, the party advancing the evidence must rely on evidence and standards of comparable scientific validity to the evidence and standards which form the scientific basis for the listing of such chemical. Thus, the ability to deviate from the regulatory method for calculating the NOEL and the exposure is limited.

Based on this the court ruled, in part, as follows:
"A chemical is 'known to the state to cause . . . reproductive toxicity . . . if in the opinion of the state's qualified experts it has been clearly shown through scientifically valid testing according to generally accepted principles to cause . . . reproductive toxicity, or if a body considered to be authoritative by such experts has formally identified it as causing . . . reproductive toxicity, or if an agency of the state of federal government has formally required it to be labeled or identified as causing . . . reproductive toxicity.' (Section 25249.8, subd. (b).) The list of chemicals known to the state to cause reproductive toxicity includes [PCBs] and [PCB] compounds (hereafter [PCBs]. (Cal. Code Regs., tit. 22, section 12000, subd. (c)(1), p. 182, col.2).

One of the Act's principal sections states that '[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause . . . reproductive toxicity without giving first clear and reasonable warning to such individual . . ." (section 25249.6, italics added.)

The term 'person' includes individuals and various entitles. (Section 25249.11, subd. (a).) The phrase '[p]erson in the course of doing business' does not include certain entities or an employer with fewer than 10 employees. (Section 25249.11, subd. (b); see section 25249.5.)

'"Knowingly" refers only to knowledge of the fact that a discharge of, release of, or exposure to a chemical listed . . . [as a reproductive toxin] is occurring." (Cal. Code Regs., tit 22, section 12201, subd. (d).) In general, '[n]o knowledge that the discharge or exposure is unlawful is required.' (*Ibid.*)

.....

The 'level in question' means 'the chemical concentration of a listed chemical for the exposure in question.' (Cal.Code Regs., tit. 22, section 12821m subd.(a).)

The Act's warning requirements (section 25249.6) is subject to statutory exemptions, one of which applies to '[a]n exposure for which the *person responsible can show* that the exposure . . . will have no observable effect assuming exposure at one thousand (1,000) times the level in question for substances known to the state to cause reproductive toxicity . . . .' (section 25249.10, subd. (c), italics added (hereafter 'exposure exemption').) 'In any action brought to enforce [the warning requirement,] **the *burden of showing* that an exposure meets the criteria of this subdivision shall be on the defendant.'** (*Ibid.*, italics added.)

.....

The Act is enforced in accordance with regulations promulgated by the Office of Environmental Health Hazard Assessment, the primary agency that implements the Act. (See Cal. Code Regs., tit. 22, sections 12301, 12302, 12305; *id.*, appen. foll. section 12903, p. 199.) .....

.....

A defendant is exempt from warning others about a reproductive toxin if the level of exposure in question is 1,000 times below than the NOEL. **If the defendant is not exempt, it must provide a warning that is 'reasonably calculated, considering the alternative methods available under the circumstances, to make the warning message available to the individual prior to exposure.'** (Cal. Code Regs. tit. 22, section 12601, subd. (a).) .....

.....

Of course, ***at trial*, a defendant raising an affirmative defense has the burden of proving it.** (Ramirez v. Yosemite Water Co. (1999) 20 cal.4th 785, 794-795; Bertero v. National General Corp. (1974) 13 Cal2d 43, 54; see section 25249.10, subd. (c).) **Under the Act, a defendant relying on the exposure exemption *at trial* would have to establish the NOEL, the level of exposure in question, and, ultimately, that the level of exposure was 1,000 times below the NOEL.** (Section 25249.10, subd. (c); Cal. Code Reg., tit. 22, sections 12801, subds. (a), (b)(1), (c), 12803.)

.....

Defendants had an initial burden to make a prima facia showing that the exposure exemption applied. That showing, however, could not be based on [Plaintiff's] *lack of evidence to disprove* the applicability of the defense. (See Anderson v. Metaclad Insulation Corp. (1999) 72 Cal.App.4th 284, 289-290; Huynh v. Ingersoll-Rand (1993) 16 Cal.App.4th 825, 830-831; Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2001) 10:237, pp. 20-75 to 10-76, rev. # 1, 2001.) Defendants' contrary contention puts the cart before the horse. ... **[T]he burden of production did not shift to [Plaintiff], and its lack of evidence was of no**

consequence.

.....

[Plaintiff's] discovery responses, *viewed in light* of the entire record, did not contend or admit that defendants had exposed individuals to a *specific* level of [PCBs]. Instead, consistent with its burden of proof under the Act, [Plaintiff] simply alleged that defendants had knowingly and intentionally exposed [customers] to [PCBs] without a warning. That allegation - unchallenged for purposes of summary judgment - put *the* burden on defendants to make a prima facie showing that the level of exposure was within the limits set by the Act: 'In any action brought to enforce [the warning requirement,] the *burden of showing* that an exposure [is exempt] shall be on the *defendant.*' (Section 25249.10,10, subd. (c), italics added.)

[Plaintiff] did not have to fund scientific studies or collect medical data to establish the NOEL or to gauge the level of exposure at defendants' offices. Nor did it have to hazard a guess. Under the Act, *defendants*, not [Plaintiff] , had to contend that the exposure was at a specific level - 1,000 times below the NOEL. By not alleging a specific level exposure, [Plaintiff] did not concede the level to be 1,000 times below the NOEL. As stated in [Plaintiff's] separate statements, '[s]ince defendants have not shown a complete defense under . . . [the exposure exemption], plaintiff has no evidentiary burden . . . .' We cannot fault a party for providing discovery responses that comport with its burden of proof under the Act.

.....

The [California] Attorney General agrees, stating in his amicus brief: "The [] Defendants further based their argument on the fact that, in discovery, [Plaintiff] stated that it lacked information about the level of exposure to [PCBs] from [farmed fish], had no contention that exposure to [PCBs] at one thousand times the level in question would result in observable effects, and had no evidence that defendants caused injury by exposing individuals to [PCBs]. . . . [T]he trial court granted summary judgment . . . and dismissed the action. . . . . [T]his ruling is in error and should be reversed. . . . . .

.....

'As evident from the record, [] Defendants failed to submit evidence to meet even a single element of the exemption. They did not perform a quantitive risk assessment and did not provide any evidence whatsoever that established the NOEL for [PCBs]. .....

.....

'Furthermore, it is irrelevant that [Plaintiff] admitted in discovery that it [(1)] had no contention about the *level of* exposure to [PCBs] from [farmed fish], and [(2)] had no contention that exposure at one thousand times the level in question would result in observable effects. ..... [Plaintiff] was only required to prove a knowing and intentional exposure without a warning. . . . It did so. It was not required to have contentions or to present evidence about the NOEL or the exposure level, until [] Defendants met their own burden of presenting evidence . . . that the exposure to [PCBs] from [farmed fish] is one thousand times below the NOEL for [PCBs]. . . . Since the [] Defendants failed to establish the elements of the exemptions, [Plaintiff] had no further burden in presenting its case.' (Italics in original, citations and fn. omitted.)
(Italics original.) (Emphasis added.)

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Dated: May, 24, 2010

/ Trent Jason

Trent Jason
in pro per

CERTIFICATE OF MERIT
PURSUANT TO CALIFORNIA HEALTH AND SAFETY CODE, SECTION 25249.7(d)

I, Trent Jason, hereby declare, as follows:

1) This Certificate of Merit, as mandated by California Health and Safety Code, accompanies the attached 60 DAY NOTICE, in which is it alleged that the sole party identified in the notice has violated California Health and Safety Code, section 25249.6, by failing to provide clear and reasonable warnings:

2) I am the complainant in this matter, and am acting as the Private Enforcer Plaintiff, in pro per, at this time.

3) I have consulted with a highly qualified of person with relevant and appropriate experience and/or expertise, who is a long time toxicologist, who has reviewed facts, studies, or other data regarding the exposure of PSBs in farmed salmon, which is the subject of the action in this matter.

4) Based on the information obtained through this consultant, and on all other information in my possession, of which information is incorporated into this Notice of Violation and Certificate of Merit, and of which other information is itemized below, and presented in that same consecutive order as per this itemization, I believe there is a reasonable and meritorious case for the private action that is intended to be pursued by me, as the Private Enforcer Plaintiff, after the sixty days period of the service of this notice, by mail, plus five days for mailing, as mandated by California Code of Civil Procedure, section 1013. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the case can be established and that the information will not prove that the alleged violators will be able to establish any of the affirmative defenses set forth in the statute.

5) The copy of the Certificate of Merit served on the California State Attorney General, at this time, known as Edmond Gerry Brown, Jr., attaches to it factual information sufficient to establish the basis for the certificate, including the information identified in California Health and Safety Code, Section 25249.7(h)(2), for example:
(1) the identity of the persons consulted with and relief on by the certificate, and,
(2) the facts, studies, or other data reviewed by those persons.

/

Dated: May 24, 2010

Trent Jason
Complainant, in pro per

VERIFICATION:

I, Trent Jason, acting in pro per, am the complainant in this matter. I prepared the above thirty page long "60 Day Notice to Violators." I declare under penalty of perjury, pursuant to the laws of the State of California, that all the above representations are true and correct to the best of my knowledge. As to those things that I allege are based on belief, I reasonably believe each of those statements are also true and correct.

Dated: May 24, 2010

Trent Jason
Complainant, in pro per

APPLICABLE STATUTES SERVED ON VIOLATOR
AS ATTACHED, HEREINAFTER

California Health and Safety Code, section 25249.6: Required warning before exposure to chemicals known to cause cancer
California Health and Safety Code, section 25249.7: Violator may be enjoined in any court of competent jurisdiction
California Health and Safety Code, section 25249.7: Definitions; (c) "significant amount" means any detectable amount except an amount which would meet the exemption test in subdivision (c) of section 25249.10 - burden of showing an exposure meets the criteria of this subdivision shall be on the defendant.
California Health and Safety Code, section 25249.13: Preservation of Existing Rights, Obligations, and Penalties
California Health and Safety Code, section 110545: Defining Adulterated Food

APPLICABLE CALIFORNIA CODE OF REGULATIONS SERVED ON VIOLATOR:
AS ATTACHED, HEREINAFTER:

Title 11 - Department of Justice, Division 4 - Proposition 65 Private Enforcement, Final Regulation

CHAPTER 1 -
California Code of Regulations, section 3000 - Authority
California Code of Regulations, section 3001- Definitions
California Code of Regulations, section 3002 - Complaints
California Code of Regulations, section 3003 - Settlements
California Code of Regulations, section 3004 - Judgments
California Code of Regulations, section 3005 - OSHA matters (not applicable in this matter)
California Code of Regulations, section 3008 - Affidavit of Compliance

CHAPTER 2 - CERTIFICATES OF MERIT
California Code of Regulations, section 3100 - General
California Code of Regulations, section 3101 - Contents
California Code of Regulations, section 3102 - Supporting documentation
California Code of Regulations, section 3103 - Effect of Failure to Comply

CHAPTER 3 - SETTLEMENT GUIDELINES
California Code of Regulations, section 3200 - Authority and Scope
California Code of Regulations, section 3201 - Attorney's fees
California Code of Regulations, section 3202 - Clear and Reasonable Warning
California Code of Regulations, section 3203 - Reasonable Civil Penalty
California Code of Regulations, section 3204 - Other provisions

Title 22 - Division 2, Part 2, Subdivision 1, CHAPTER 3

ARTICLE 1 Preamble

ARTICLE 3 - SCIENCE ADVISORY BOARD
California Code of Regulations, section 12306 - Chemicals Formally Identified by Authoritative Bodies

ARTICLE 5 - EXTENT OF EXPOSURE
California Code of Regulations, section 12501 - Exposure to a Naturally Occurring Chemical in a Food (Where food contains a chemical as a result of human activity "exposure" occurs as to that portion of the chemical which resulted from such human activity)

ARTICLE 6 - CLEAR AND REASONABLE WARNINGS

California Code of Regulations, section 12601 - Clear and Reasonable Warnings
(Alcoholic Beverages subsections deleted, as being non-applicable)

ARTICLE 7

California Code of Regulations, section 12721 - Level of Exposure to Chemicals Causing Cancer

ARTICLE 8

California Code of Regulations, section 12821 - Level of Exposure to Chemicals Causing Reproductive Toxicity

ARTICLE 9

California Code of Regulations, section 12901 - Methods of Detection
California Code of Regulations, section 12902 - Formally Required to Be Labeled or Identified as Causing Cancer or Reproductive Toxicity
California Code of Regulations, section 23903 - Notices of Violation

APPLICABLE DOCUMENTS SERVED UPON VIOLATOR
AS ATTACHED, HEREINAFTER

State of California Environmental Protection Agency - Office of Environmental Health Hazard Assessment
Safe Drinking Water and Toxic Enforcement Act of 1986
[List of] Chemicals Known to The State [of California] To Cause Cancer or Reproductive Toxicity;
as last revised on September 11, 2009,
composed of 19 pages

Proposition 65 Status Report Safe Harbor Levels:
No Significant Risk Levels for Carcinogens and Maximum Allowable Dose Levels for Chemicals Causing Reproductive Toxicity
January 20005
Reproductive and Cancer Hazard Assessment Section
Office of Environmental Health Hazard Assessment
California Environmental Protection Agency
composed of 21 pages

Polychlorinated biphenyl
Provided by Wikipedia.org
as obtained from the Internet site of www.en.wikipedia.org/wiki/Polychlorinated_biphenyl
composed of 19pages

State of California Secretary of State's, California Business Search
Identifying Violator Lucky Stores, Incorporated, as a Corporation, with a filing in the State of California
A Delaware Corporation, File number C1194426, Filed November 26, 1986,
including the name of Violator, the Address, and the Agent's name and address for Service of Process
and also identifying the parent company as Save Mart Supermarkets
A California Corporation, File Number C0274584, Filed May 21, 1953,
each, and both, with a material address for service as 1800 Standiford Avenue, Modesto, CA 95350,
as obtained from the unofficial records, through the Internet site identified as www.kepler.ss.ca.gov/cordata
composed of two pages

The State Bar of California's "Attorney Search" of the (Agent for Service of Process)
Identifying Violator's Agent for Service of Process as
Michael Joseph Silveira, California State Bar Number 101358, as of December 01, 1981
with an address of Save Mart Supermarkets, P O Box 3869 Modesto CA 95352;
and a telephone number of (209) 548-6503; and an e-mail address of mike@savemart.com
as obtained from the unofficial records, through the Internet site identified as www.calbar.ca.gov/search/member
composed of one page

Violator's Published list of each and every "Lucky Supermarkets" retail locations
including address, city, and telephone area code, telephone number, and
establishing 70 retail locations, and that all are within California, and all are in Northern California;
and that none are located outside the State of California, and that, therefore,
all are subject to providing the Proposition 65 Warning Notice to its customers
as obtained from the Violator's Internet web site identified as www.luckysupermarkets.com.index
composed of two pages

Complainant's Personally Prepared Notice of
"California Proposition 65 Warning - As to Farmed Salmon - Attention California Residents"
as e-mailed to Violator's Agent for Service of Process
composed of one page

CERTIFICATE OF NELAP ACCREDITATION FOR TESTING SALMON, AND PUBLISHED ARTICLES AS TO PCBs IN FARMED SALMON SERVED ON VIOLATOR:

California State Environmental Laboratory Accreditation Program Branch Certificate of NELAP Accreditation
granted to AXYS Analytical Services, Ltd., 2045 Mills Road West, Sidney, British Columbia, V8L 5X2, Canada
signed by George C. Kulasingam, Ph.D., Chief, Environmental Laboratory Accreditation Program Branch
Certificate Number 01138CA, Expiration Date April 30, 2010
composed of 5 pages

United States Environmental Protection Agency's article, entitled
"Polychlorinated Biphenyls (PCBs) - Health Effects of PCBs"
as obtained from the Internet site of www.epa.gov/epawaste/hazard/tsd/pcbs/pubs/effects.htm
composed of 4 pages

"Quantitative Analysis of the Benefits and Risks of Consuming Farmed and Wild Salmon"
As published in American Society for Nutrition's Journal of Nutrition, November 2005; Vol. 135, pages 2639-2643
By Jeffrey A. Foran, David H. Good, David O. Carpenter, M. Coreen Hamilton, Barbara A. Knuth, Steven J. Schwager
as obtained from the Internet site of www.jn.nutition.org/cgi/content/full/135/11/2639
composed of 9 pages

Philip E. Clapp [deceased at age 54 - September, 2008,] President of the National Environmental Trust
February 23, 2006, dated, eleven page letter, to The Honorable Deborah Platt Majoras, Chairman
Federal Trade Commission, 600 Pennsylvania Avenue, N.E. Washington, D.C. 20580
"Petition for Initiation of Enforcement Proceedings" as to false representations health hazards of farmed salmon
composed of 11 pages

"Risk-Based Consumption Advice for Farmed Atlantic and Wild Pacific Salmon
Contaminated with Dioxins and Dioxin-like Compounds"
As published in Environmental Health Perspectives, May, 2005; Volume 113, Number 5
By Jeffrey A. Foran, David O. Carpenter, M. Coreen Hamilton, Barbara A. Knuth, and Steven J. Schwager
and the full page "Figure 1" chart, showing that farmed salmon are 4 times more carcinogenic than wild salmon
as obtained from the Internet site of www.eph.niehs.nih.gov/members/2005/7626/7626.html
composed of 6 pages

"Global Assessment of Organic Contaminants in Farmed Salmon"
As Published in Science Magazine, January 09, 2004; Volume 303, number 5655, at pages 226-229
By Ronald A. Hites, Jeffrey A. Foran, David Carpenter, M. Coreen Hamilton, Barbara A. Knuth, & Steven J. Schwager;
as obtained from the Internet site www.science.org/cgi/content/full/303/5655/226,
composed of 7 pages

"Farmed Salmon Found to Contain Cancer Causing Toxics"
As Published in Environmental News Service, Bloomington, Indiana, January 08, 2004,
as obtained from the Internet site www.ens-newswire.com/ens/jan2004/2004-02-08-05.asp
composed of 6 pages

"PCBs in Farmed Salmon"
As Published on Internet by Environmental Working Group, July 29, 2003
as obtained from the Internet site www.ewg.org/book/export/html/8513,
composed of 23 pages

REQUIRED AND/OR APPLICABLE NOTICES SERVED ON VIOLATOR

California Department of Justice - "Proposition 65 Enforcement Reporting" for persons suing "in the public interest" to notify the California Attorney General of the lawsuit and the outcome of the case, with notice of the Internet site providing an on-line process for Reporting Proposition 65 private enforcement actions with mandatory electronic filing, as of January 27, 2005, composed of 1 page

California Environmental Protection Agency - "The Safe Drinking and Toxic Enforcement Act of 1986 (Proposition 65): A summary," dated February 2003, numbered pages 49 to 56, composed of 8 pages

Office of Environmental Health Hazard Assessment (OEHHA) "Proposition 65 in Plain Language," as last updated, May, 2007, composed of 4 pages

California Department of Justice - "Frequently Asked Questions - Proposition 65" As of fiscal year 2009, composed of 3 pages

California Department of Justice - July 26, 2006, letter to "Attorneys for Parties Serving Proposition 65 Notices of Violation - RE: Proper Documents to be Included with Proposition 65 Notices of Violation," composed of 2 pages, and "Declaration of Service by U. S. Mail," composed of 2 pages

The published opinion of the California Supreme Court, downloaded from www.lexis-nexis.com/research, for the case identified as Farmed Raised Salmon Cases (February 11, 2008) 42 Cal.4th 1077; 175 P.3d 1170; 72 Cal.Rptr.3d 112; 2008 Cal.LEXIS 1413, composed of 15 pages

The unpublished "Memorandum and Order" in the matter of Margot Lockwood v. Conagra Foods, Inc. as filed on February 03, 2009, in the United States District Court for the Northern District of California, case number C 08-04151 CRB, composed of 10 pages

The unpublished opinion in the matter of Stacy Holk v. Snapple Beverage Corporation (August 12, 2009) United States Court of Appeals For The Third Circuit, case number 08-3060, on Appeal from the United States District Court for the District of New Jersey, District Court case number 3-07-cv-03018, composed of 30 pages

The published opinion of the California Appellate Court, downloaded from www.lexis-nexis.com/research, for the case identified as Consumer Cause, Inc, v. Smilecare (August 9, 2001) 91 Cal.App.4th 454; 110 Cal.Rptr.2d; 2001 CalApp.LEXIS 628, composed of 13 pages

The State of California, Department of Justice, Attorney General's Office, Proposition 65 Enforcement Reporting - Attention: Proposition 65 Coordinator, 1515 Clay Street, Suite 2000, Oakland, CA 94612, Private Enforcement Filing - Health and Safety Code section 25249.7(e)(f) REPORT OF CIVIL COMPLAINT FILING, form JUS 1500, as last revided March, 2001, composed of one page.

PROOF OF SERVICE BY MAIL

(TRENT JASON VERSUS LUCKY STORES, INCORPORATED, AND ROBERT M. PICCININI, AS VIOLATORS)

I, Evan Hennessey, am a citizen of the United States, and a resident of Mendocino County, State of California.

My business address is Adair, Potswald & Hennessey, Certified Court Reporters, 212 West Perkins Street, Ukiah, California 95482.

I am over eighteen years of age and not a party to this action.

On May 24, 2010, I served the following documents on the first named parties served:

Trent Jason's "NOTICE OF VIOLATION - CALIFORNIA SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT - CHEMICAL: POLYCHLORINATED BIPHENYLS ("PCBs"): SOURCE: FARMED SALMON" composed of thirty pages (30) in length; and

Trent Jason's attached exhibits, composed of 250 pages in length; and

A copy of this "Proof of Service by Mail", which is composed of four pages (5).

ON THE REMAINING NAMED PARTIES, AFTER THE FIRST NAMED PARTY, I SERVED ONLY THE 30 PAGE NOTICE, AND THIS 5 PAGE PROOF OF SERVICE; EXCEPT, AS THE SECOND AND THIRD NAMED PARTIES, IT INCLUDED THE DECLARATION ATTACHED TO THE CERTIFICATE OF MERIT, SUMMARIZING THE COMMUNICATION MADE IN RELATION TO THE COMPLAINANT/PRIVATE LITIGATOR AND THE EXPERT WITNESS.

I served the above represented documents by placing a copy in a sealed envelope, addressed to the twenty-two (20) parties as represented below, in a fully postage paid envelope, first class mail, priority mail, postage paid, by personal delivery to one of the three active postal staff clerks who operate the front counter of the Ukiah branch of the United States Postal Service. The postage paid was affixed to each envelope prior to the delivery of each of these packages, but they were personally delivered because federal regulations require that they be delivered, in person, for packages which are more than three quarters of an inch thick, or which weigh more than thirteen ounces. Each of these packages exceed that thickness and weight.

The envelope had the representation as to who and where it was sent to, but excluding the below referenced lines that are seen in brackets, or the telephone numbers represented below, or the e-mail addresses represented below, or the web sites represented below. The sender represents that these are included in this

proof of service by mail for future reference and contact information based on the seriousness of this matter:

Michael Joseph Silveira
Senior Vice President, Chief Accounting Officer, Chief Executive Officer
[Attorney - California State Bar # 101358; as of December 01, 1981]
[Agent for Service of Lucky Stores, Incorporated and for Robert M. Piccinini]
[Agent for Service of Save Mart Supermarkets, Incorporated]
Save Mart Supermarkets, Incorporated
A California Corporation
[California Secretary of State File Number C0274584, as of May 21, 1953]
Doing Business as Lucky Stores, Incorporated
[Named Proposition 65 Violator]
A Delaware Corporation
[California Secretary of State File Number C1194426, as of 11/26/1986]
1800 Standiford Avenue
Modesto CA 95350
P O Box 3689
Modesto CA 95352
(209) 548-6503
mike@savemart.com

Edward Gerry Brown, Jr.
California State Attorney General
Office of the Attorney General
California Department of Justice
20th Floor
1515 Clay Street
P O Box 70550
P O Box 70550
Oakland CA 84612-0550
(510) 622-2149; telephone
(510) 622-2270; facsimile
ag.ca.gov/prop65

Francisca Ellis Kammerer
[Attorney - California State Bar # 236324]
Staff Counsel
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento CA 95812
(916) 445-4693
(916) 324-1786
fkammerer@cehha.ca.gov
www.oehha.ca.gov/prop65/law

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THE FOLLOWING PARTIES, AS REPRESENTED IN THIS PROOF OF SERVICE, ABOVE, WERE ONLY SERVED THE 30 PAGE NOTICE, AND THIS 5 PAGE PROOF OF SERVICE BY MAIL. THE FOLLOWING PARTIES ARE 9 DISTRICT ATTORNEYS, 2 CITY ATTORNEYS, AND 6 "PARTYS OF INTEREST"

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

District Attorney of Contra Costa County
725 Court Street, Room 402
Oakland CA 94553

District Attorney of Marin County
3501 Civic Center Drive, Room 183
San Rafael CA 94903

District Attorney of Mendocino County
100 North State Street - Courthouse Basement
Ukiah CA 95482

District Attorney of Napa County
931 Parkway Mall
Napa CA 94559

District Attorney of San Francisco County
880 Bryant Street, Room 325
San Francisco CA 94103

District Attorney of San Mateo County
400 County Center, 3rd Floor
Redwood City CA 94063

District Attorney of Santa Clara County
701 Ocean Street, Room 200
Santa Cruz CA 95061

District Attorney of Solano County
600 Union Avenue
Fairfield CA 94533

Richard Doyle
City Attorney of San Jose
200 East Santa Clara Street
San Jose CA 95113-1903
(408) 535-1900

Dennis J. Herrera
City Attorney of San Francisco
City Hall, Rom 234
1 Dr. Carlton B. Goodlett Place
San Francisco CA 94102-4682
(415) 554-4700
cityattorney@sfgov.org

Jane Houlihan
Senior Vice-President for Research
Environmental Working Group, Incorporated
California Office
2201 Broadway, Suite 308
Oakland CA 94612
(51) 444-0973
www.ewg.org

Joanna Mattson
Research Manager
Center for Environmental Health
526 61st Street
Oakland CA 94609
(510) 594-9864; extension 201
(510) 594-9683; facsimile number
ceh@cehca.org
www.cehca.org

David H. Festa
Vice-President
West Coast and Oceans
Environmental Defense Fund
28th Floor
123 Mission Street
San Francisco CA 94105-5142
(415) 293-6050; telephone
(415) 293-6051; facsimile
www.edf.org

Dr. David Carpenter
Director
Institute for Health and the Environment
University at Albany
Seafood Safe, LLC
[Testing Program for PCBs and Mercury in Seafood]
340 Central Avenue
Dover NH 03820
Information@SeafoodSafe.com
www.seafoodsafe.com

The Center for Food Safety
West Coast Office
2601 Mission Street, Suite 803
San Francisco CA 94110
(415) 826-2770
www.truefood.now

Kimberly A. Krawlowec
Attorney At Law
Schubert, Jonckleer, Kolbe, and Krawlowec, L. L. P.
Suite 1650
Three Embarcadero Center
San Francisco CA 94111
(415) 788-4220
(415) 788-0161
uclpractioner@gmail.com
www.schubertlawfirm.com

I, Evan P. Hennessey, declare, under penalty of perjury, pursuant to the laws of the State of California, that the foregoing is true and correct. I signed this Proof of Service by Mail document on:

May 24, 2010

_____

Evan P. Hennessey
Adair, Potswald & Hennessey
Certified Court Reporters