



Matthew M. Maclear  
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415.568.5200

January 5, 2018

**NOTICE OF VIOLATION OF  
CALIFORNIA HEALTH & SAFETY CODE, SECTION 25249.5 *ET SEQ.*  
(PROPOSITION 65)**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

ATA Law Group represents The Chemical Toxin Working Group, Inc., doing business as HealthyLivinG Foundation (“HLF”), at 1801 Chart Trail, Topanga, CA 90290. HLF is a California non-profit corporation dedicated to, among other causes, organization dedicated to reducing the amount of chemical toxins in consumer products, the promotion of human health, environmental safety, and improvement of worker and consumer safety.

Through this Notice of Violation (“Notice”), HLF seeks to reduce and/or eliminate exposures to lead and cadmium ingested by consumers from baby clams produced, distributed, and/or sold by **Island Pacific Supermarkets, Inc.** (the alleged “Violator”).

This Notice constitutes written notification that Island Pacific Supermarkets, Inc. has violated the warning requirements of Proposition 65, which is codified at California Health & Safety Code, section 25249.5 *et seq.*, with respect to the Subject Product identified below. These violations have occurred and continue to occur because the alleged Violator failed to provide required clear and reasonable warnings with this product. Section 25249.6 of the statute provides 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 cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual.” Without proper warnings regarding the toxic effects of exposures to this listed chemical that results from contact with this product, California citizens lack the information necessary to make an informed decision on whether and/or how to eliminate (or reduce) their risk of exposure to the listed chemical from the reasonably foreseeable use of the product.

Proposition 65 requires that notice and intent to sue be provided to a violator 60 days before a suit is filed in connection therewith. With this Notice, HLF gives written notice of the alleged violation to the Noticed Parties and the appropriate governmental authorities. This Notice covers all violations of Proposition 65 that are currently known to the noticing party from information now available as specifically related to the violating product sold through Noticed Parties, and other retailers and/or distributors. HLF is continuing its investigation that may reveal further violations. Pursuant to Health and Safety Code, section 25249.7, subdivision (d), HLF intends to file a private enforcement action in the public interest sixty (60) days after effective



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service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**Certificate of Merit and General Information about Proposition 65.** Pursuant to California Code of Regulations, title 11, section 3100, a certificate of merit is attached hereto. Pursuant to California Code of Regulations, title 27, section 25903, subdivision (b), a copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with this letter served to the alleged Violator identified below.

Proposition 65 requires that a “clear and reasonable” warning be provided prior to exposure to certain listed chemicals. The Noticed Parties are in violation of Proposition 65 because the Noticed Parties have failed to provide a warning to consumers that they are being exposed to lead and cadmium. While in the course of doing business, the Violator “knowingly and intentionally” expose consumers to lead and cadmium without first providing a “clear and reasonable” warning. (See Health & Saf. Code, § 25249.6.) The method of warning should be a warning that appears on the product’s label. (See Cal. Code Regs. tit. 27, § 25603.1, subd. (a).) The Violator has not provided any Proposition 65 warnings on the Subject Product’s label or any other appropriate warnings that persons handling, ingesting, and/or otherwise using the specified product are being exposed to lead and cadmium.

**Alleged Violator.** The names of the companies covered by this notice that violated Proposition 65 (hereinafter the “Violator”) are:

- **Island Pacific Supermarkets, Inc.**  
20819 Currier Road, Unit 100  
Walnut, CA 91789

**Consumer Products and Listed Chemicals.** The following is the product subject to this Notice of Violation (the “Subject Product”) and the chemicals in the specified product identified as exceeding allowable levels under Proposition 65:

- **Flower Brand Whole Baby Clams 20 oz. – Lead and Cadmium**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause reproductive toxicity: developmental toxicity, male reproductive toxicity, and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

On October 1, 1987, the State of California officially listed cadmium as a chemical known to cause cancer. On May 1, 1997, the State of California officially listed Cadmium as causing reproductive toxicity: developmental toxicity and male reproductive toxicity.



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In summary, lead and cadmium were listed under Proposition 65 as known to the State to cause cancer and reproductive toxicity:

<b>Chemical</b>	<b>CAS No.</b>	<b>Toxicological Endpoint</b>	<b>Listing Mechanism</b>
Lead <sup>1</sup>	7439-92-1	Cancer; Reproductive Toxicity	Authoritative Body-US EPA (AB-US EPA); Formally Required to be Labeled (FR)
Cadmium <sup>2</sup>	7440-43-9	Cancer; Reproductive Toxicity	State's Qualified Experts (SQE)

**Violations.** The alleged Violator knowingly and intentionally exposed and continue to knowingly and intentionally expose consumers within the State of California to lead at levels that, upon reasonable use of the product, exceed the No Significant Risk Level and/or the Maximum Allowable Dose Level without providing clear and reasonable warning of this exposure. In particular, the product does not warn that it contains chemicals known to the State of California to cause reproductive toxicity or developmental toxicity.

The Maximum Allowable Dose Level (“MADL”) for lead, reproductive toxicity is 0.5 µg/day. The MADL is calculated based on a body weight of 58 kg for an adult or pregnant woman, 70 kg for an adult male, 40 kg for an adolescent, 20 kg for a child, 10 kg for an infant, and 3.5 kg for a neonate. (Cal. Code Regs. tit. 27, § 25803, subd. (b).) The exposure estimate from the Flower Brand Whole Baby Clams significantly exceeds the MADL set by the California Office of Environmental Health Hazard Assessment. As a result, Flower Brand Whole Baby Clams needs a clear a reasonable warning under Proposition 65.

The MADL - oral for cadmium, reproductive toxicity is 4.1 µg/day. The exposure estimate from the Flower Brand Whole Baby Clams exceeds the MADL set by the California Office of Environmental Health Hazard Assessment. As a result, Flower Brand Whole Baby Clams needs a clear a reasonable warning under Proposition 65.

**Route of Exposure.** The consumer exposures that are the subject of this notice result from the recommended use of the product, ingestion. Consumers and other individuals, including women of childbearing age, are orally exposed to the listed chemicals by eating the product.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least January 5, 2017, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are

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<sup>1</sup> <https://oehha.ca.gov/proposition-65/chemicals/lead-and-lead-compounds>.

<sup>2</sup> <https://oehha.ca.gov/proposition-65/chemicals/cadmium>.



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provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to the listed chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, HLF is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) recall products already sold or undertake best efforts to ensure that the requisite health hazard warnings are provided to those who have received such products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 for products sold in the future or reformulate such products to eliminate further lead and cadmium exposures. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time consuming litigation.

HLF has retained ATA Law Group as legal counsel in connection with this matter.  
**Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated herein.**

Dated: January 5, 2018

Very truly yours,

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Matthew C. Maclear  
AQUA TERRA AERIS LAW GROUP  
Attorney for The Chemical Toxin Working  
Group, Inc.

Attachments:

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Violator)
- Additional Supporting Information for Certificate of Merit (to AG only)



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### **CERTIFICATE OF MERIT**

**Re: The Chemical Toxin Working Group, Inc.'s Notice of Proposition 65 Violations by Island Pacific Supermarkets, Inc.**

I, Matthew Maclear, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the party identified in the notice violated California Health & Safety Code, section 25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.

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

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

Dated: January 5, 2018

A handwritten signature in blue ink, appearing to read "Matt Maclear", written over a light blue horizontal line.

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Matthew C. Maclear  
AQUA TERRA AERIS LAW GROUP  
Attorney for The Chemical Toxin Working Group,  
Inc.



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### **CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 828 San Pablo Avenue, Suite 115B, Albany, CA 94706. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Berkeley, California.

On January 5, 2018, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Nino Jefferson Miave Lim or  
Current President or CEO  
Island Pacific Supermarkets, Inc.  
20819 Currier Road, Unit 100  
Walnut, CA 91789

Nino Jefferson Miave Lim or Current Agent for  
Service of Process  
Island Pacific Supermarkets, Inc.  
20819 Currier Road, Unit 100  
Walnut, CA 91789

On January 5, 2018, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice>:

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Oakland, CA 94612-0550

On January 5, 2018, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was **sent via electronic mail** to the party listed below:

Stacey Grassini, Deputy District Attorney  
District Attorney, Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
[sgrassini@contracostada.org](mailto:sgrassini@contracostada.org)

Gary Lieberstein, District Attorney  
District Attorney, Napa County  
931 Parkway Mall  
Napa, CA 94559  
[CEPD@countyofnapa.org](mailto:CEPD@countyofnapa.org)



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Birgit Fladager, District Attorney  
District Attorney, Stanislaus County  
832 12th Street, Suite 300  
Modesto, CA 95354  
[Prop65@standa.org](mailto:Prop65@standa.org)

Paul E. Zellerbach  
District Attorney, Riverside County  
3072 Orange Street  
Riverside, CA 92501  
[Prop65@rivcoda.org](mailto:Prop65@rivcoda.org)

Dije Ndreu, Deputy District Attorney  
District Attorney, Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
[Prop65DA@co.monterey.ca.us](mailto:Prop65DA@co.monterey.ca.us)

Philip J. Cline  
District Attorney, Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
[Prop65@co.tulare.ca.us](mailto:Prop65@co.tulare.ca.us)

Yen Dang, Supervising Deputy District Attorney  
District Attorney, Santa Clara County  
70 W Hedding St  
San Jose, CA 95110  
[EPU@da.sccgov.org](mailto:EPU@da.sccgov.org)

Gregory D. Totten  
District Attorney, Ventura County  
800 S Victoria Ave  
Ventura, CA 93009  
[daspecialops@ventura.org](mailto:daspecialops@ventura.org)

Stephan R. Passalacqua, District Attorney  
District Attorney, Sonoma County  
600 Administration Dr  
Sonoma, CA 95403  
[jbarnes@sonoma-county.org](mailto:jbarnes@sonoma-county.org)

Michelle Latimer, Program Coordinator  
District Attorney, Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
[mlatimer@co.lassen.ca.us](mailto:mlatimer@co.lassen.ca.us)

Anne Marie Schubert, District Attorney  
District Attorney, Sacramento County  
901 G Street  
Sacramento, CA 95814  
[Prop65@sacda.org](mailto:Prop65@sacda.org)

Gregory Alker, Assistant District Attorney  
District Attorney, San Francisco County  
732 Brannan Street  
San Francisco, CA 94103  
[Gregory.alker@sfgov.org](mailto:Gregory.alker@sfgov.org)

Tori Verber Salazar, District Attorney  
District Attorney, San Joaquin County  
222 E. Weber Avenue, Rm 202  
Stockton, CA 95202  
[DAConsumer.Environmental@sjcda.org](mailto:DAConsumer.Environmental@sjcda.org)

Eric J. Dobroth, Deputy District Attorney  
District Attorney, San Luis Obispo County  
County Government Center Annex, 4th Floor  
San Luis Obispo, CA 93408  
[edobroth@co.slo.ca.us](mailto:edobroth@co.slo.ca.us)

Jeff W. Reisig, District Attorney  
District Attorney, Yolo County  
301 Second Street  
Woodland, CA 95695  
[cfejd@yolocounty.org](mailto:cfejd@yolocounty.org)

Jeffrey S. Rosell, District Attorney  
District Attorney, Santa Cruz County  
701 Ocean Street  
Santa Cruz, CA 95060  
[Prop65DA@santacruzcounty.us](mailto:Prop65DA@santacruzcounty.us)





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On January 5, 2018, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE § 25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by U.S. First Class Mail.

Executed on January 5, 2018 in Berkeley, California.

Amanda M. Prasuhn

**Service List**

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Los Angeles County 210 West Temple Street, Suite 18000 Los Angeles, CA 90012	District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, Shasta County 1355 West Street Redding, CA 96001
District Attorney, Amador County 708 Court Street Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, Sierra County PO Box 457 Downieville, CA 95936
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	Sacramento City Attorney's Office 915 I Street, 4 <sup>th</sup> Floor Sacramento, CA 95814
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991





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District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Humboldt County 825 5th Street 4th Floor Eureka, CA 95501	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Inyo County P.O. Drawer D Independence, CA 93526	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, San Bernardino County 303 West 3 <sup>rd</sup> Street, 6 <sup>th</sup> Floor San Bernardino, CA 92415-0502	San Francisco, City Attorney City Hall, 234 1 Dr. Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	