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19 Milky Way International Trading Corporation
20 dba MW Polar Foods, Inc.

21 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
22 **COUNTY OF ALAMEDA**

23 **COORDINATED PROCEEDINGS**
24 **SPECIAL TITLE (RULE 3.550)**

25 **PROPOSITION 65 CANNED FOOD CASES**
26 **AND COORDINATED ACTIONS**

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

Plaintiffs,

v.

MW POLAR FOODS, INC.; MILKY WAY
INTERNATIONAL TRADING
CORPORATION DBA MW POLAR FOODS,
INC. and DOES 1-100,

Judicial Council Coordination Proceeding
No. 4779/Contra Costa County Case No.
C12-01327

Reservation No. R-1673940

[PROPOSED] STIPULATED CONSENT
JUDGMENT; [PROPOSED] ORDER RE:
MW POLAR FOODS, INC.

Health & Safety Code Section 25249.5 et seq.

Date: November 25, 2015

Time: 8:30 a.m.

Dept.: 21

Judge Wynne S. Carvill

Action Filed: June 4, 2012

Trial Date: March 21, 2016

1
2 **Defendants.**
3
4

5 1.1 On June 4, 2012, plaintiff David Steinman ("Steinman"), as a private enforcer, and in
6 the public interest, initiated Case No. C12-01327 ("Action") by filing a Complaint for Injunctive
7 and Declaratory relief and Civil Penalties (the "Complaint") pursuant to the provisions of California
8 Health and Safety Code section 25249.5 *et seq.* ("Proposition 65"), against defendant MW Polar
9 Foods, Inc. in the Superior Court of the State of California, County of Contra Costa. On June 26,
10 2012, Mr. Steinman filed an Amendment to the Complaint adding defendant Milky Way
11 International Trading Corporation, dba MW Polar Foods, Inc. (collectively, MW Polar Foods, Inc.
12 and Milky Way International Trading Corporation are referred to as "MW Polar" herein). On
13 September 16, 2013, plaintiff The Chemical Toxin Working Group, Inc. ("CTWG") was joined and
14 an Amended Complaint was filed (together, Mr. Steinman and CTWG are referred to as "Plaintiffs"
15 herein; collectively, Plaintiffs and MW Polar are referred to the "Parties" herein; individually, Mr.
16 Steinman, CTWG, MW Polar Foods, Inc. and Milky Way International Trading Corporation is each
17 a "Party"). On May 13, 2014, this Action was coordinated with the following four separate actions,
18 and on September 24, 2014 Judge Wynne S. Carvill was assigned the Coordination Trial Judge of
19 these coordinated cases:

20 (1) *David Steinman et al. v The Kroger Company et al.*, Case No. RG12636763,
21 Superior Court of the State of California, County of Alameda;

22 (2) *David Steinman et al. v Crown Prince, Inc. et al.*, Case No. RG13673501.
23 Superior Court of the State of California, County of Alameda;

24 (3) *The Chemical Toxin Working Group, Inc. v Crown Prince, Inc. et al.*, Case
25 No. RG13699240, Superior Court of the State of California, County of Alameda;

26 (4) *The Chemical Toxin Working Group, Inc. v JFE Shoji Trade America, Inc. et al.*
27 Case No. R-1616321, Superior Court of the State of California, County of Alameda.
28

1 On _____, 2015, the Court issued a Tentative Ruling granting Plaintiff's Motion to
2 Approve Proposition 65 Settlement and for Entry of Consent Judgment. The Court remanded this
3 Action (C12-01327) to the Superior Court of California, County of Contra Costa for entry of the
4 Consent Judgment.

5 **1.2** In this Action, Plaintiffs allege that MW Polar arranges for the manufacture of, sells,
6 and/or distributes various products (collectively, the "Covered Products"; individually, a "Covered
7 Product") that contain lead, a chemical listed pursuant to Proposition 65 as a reproductive toxicant,
8 and that the Covered Products expose consumers at a level requiring a Proposition 65 warning. The
9 Covered Products are: MW Polar Foods Oysters, Fancy Whole; MW Polar Foods Pieces Oysters;
10 MW Polar Foods Baby Clams; MW Polar Foods Smoked Clams in Oil; and Four Seasons Mandarin
11 Oranges in Light Syrup. Plaintiffs also allege that the Covered Product MW Polar Foods Oysters,
12 Fancy Whole contains cadmium, a chemical also listed pursuant to Proposition 65 as a reproductive
13 toxicant and that such Covered Product exposes consumers at a level requiring a Proposition 65
14 warning for cadmium.

15 **1.3** Mr. Steinman is an individual and founder of CTWG, a California
16 non-profit corporation. Plaintiffs are private enforcers of Proposition 65, acting in the public
17 interest, that have diligently prosecuted this matter and are settling the case in the public interest.

18 **1.4** MW Polar is a business entity that employed ten or more persons at all times
19 relevant to this Action.

20 **1.5** The initial Complaint was based on allegations that individuals are exposed to lead by
21 consuming certain of MW Polar's products as set forth in Mr. Steinman's Notice of Violation, dated
22 February 24, 2012 that was served on the California Attorney General, other public enforcers and
23 Defendants. The Amended Complaint is based on allegations contained in Mr. Steinman's Notice
24 of Violation, dated February 24, 2012, and CTWG's Notices of Violations dated March 29, 2013,
25 and July 9, 2013 that were served on the California Attorney General, other public enforcers, and
26 MW Polar. A true and correct copy of these Notices of Violation is attached hereto as **Exhibit A**.
27 More than 60 days have passed since the Notices of Violation were mailed, and no designated
28 governmental entity has filed a complaint against MW Polar with regard to the Covered Products or

1 the alleged violations. Subsequent to filing Plaintiffs' Amended Complaint, the Parties determined
2 that two of the products named in CTWG's July 9, 2013 Notice of Violation, MW Polar Foods
3 Mushrooms Slices, and MW Polar Foods Shitake Sliced Mushroom Portabella Style, do not expose
4 individuals to lead at a level requiring a Proposition 65 warning. Accordingly, the Parties hereby
5 stipulate that the Amended Complaint shall be deemed amended to strike the products MW Polar
6 Foods Mushrooms Slices and MW Polar Foods Shitake Sliced Mushroom Portabella Style from the
7 list of products in section 1, page 1.

8 1.6 On November 12, 2013, CTWG issued an additional Proposition 65 Notice of Violation
9 to MW Polar that was served on the California Attorney General, other public enforcers and MW
10 Polar alleging that individuals are exposed to cadmium by consuming MW Polar Foods Oysters,
11 Fancy Whole. A true and correct copy of the Notice of Violation is attached hereto as Exhibit B.
12 More than 60 days have passed since the Notice of Violation was mailed, and no designated
13 governmental entity has filed a complaint against MW Polar with regard to the Covered Product
14 MW Polar Foods Oysters, Fancy Whole or the alleged violations. The Parties hereby stipulate that
15 the Amended Complaint shall be deemed amended to include the November 12, 2013 Notice of
16 Violation and all such allegations contained therein.

17 1.7 Plaintiffs' Notices of Violation and the Amended Complaint allege that
18 use of the Covered Products expose persons in California to chemicals covered by Proposition 65
19 without first providing clear and reasonable warnings in violation of California Health and Safety
20 Code section 25249.6. MW Polar denies all material allegations contained in the Notices of
21 Violation and Amended Complaint and specifically denies that the Covered Products require a
22 Proposition 65 warning or otherwise harm any person. Nothing in the Consent Judgment shall be
23 construed as an admission by MW Polar of any fact, issue of law or violation of law, nor shall
24 compliance with the Consent Judgment constitute or be construed as an admission by MW Polar of
25 any fact, issue of law or violation of law, at any time, for any purpose.

26 1.8 The Parties have entered into this Consent Judgment in order to settle,
27 compromise and resolve disputed claims and thus avoid prolonged and costly litigation. Nothing in
28 this Consent Judgment shall constitute or be construed as an admission by any of the Parties, or by

1 any of their respective officers, directors, shareholders, employees, agents, parent companies,
2 subsidiaries, divisions, affiliates, franchises, licensees, customers, suppliers, distributors,
3 wholesalers, or retailers of any fact, conclusion of law, issue of law, violation of law, fault,
4 wrongdoing, or liability, including without limitation, any admission concerning any alleged
5 violation of Proposition 65 or any other law or legal duty.

6 **1.9** Except as expressly set forth herein, nothing in this Consent Judgment shall
7 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
8 other or future legal proceeding unrelated to these proceedings.

9 **1.10** The Effective Date of this Consent Judgment is the date on which it is entered as a
10 Judgment by this Court.

11 **2. JURISDICTION AND VENUE**

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

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

19 **3.1** Subject to the provisions set forth in Section 3.4 below, MW Polar shall not
20 distribute for sale in the State of California, or directly sell in the State of California, any of the
21 Covered Products unless each individual unit of these products (1) meets the warning requirements
22 under Section 3.2, or (2) qualifies as a "Reformulated Covered Product" under Section 3.3.

23 **3.1.5** As used in this Consent Judgment, the term "distribute into the State of California"
24 shall mean MW Polar directly ships any of the Covered Products into California for sale in
25 California or sells the Covered Products to a distributor or retailer that MW Polar knows will sell
26 these products in California.

27 **3.2 Clear and Reasonable Warnings**

28 **3.2.1** If MW Polar provides a warning for MW Polar Foods Pieces Oysters, MW

1 Polar Foods Baby Clams, MW Polar Foods Smoked Clams in Oil and Four Seasons Mandarin
2 Oranges in Light Syrup pursuant to Section 3.1(1), then MW Polar shall provide the following
3 warning:

4 [California Proposition 65] **WARNING: THIS PRODUCT CONTAINS LEAD, A**
5 **CHEMICAL KNOWN TO THE STATE OF CALIFORNIA TO CAUSE [CANCER**
6 **AND] BIRTH DEFECTS OR OTHER REPRODUCTIVE HARM.**

7 The word "cancer" shall be used in the warnings above only if the average daily exposure level
8 exceeds 15 micrograms of lead as determined pursuant to the provisions set forth in Section 3.3 and
9 3.4.

10 3.2.2 If MW Polar provides a Proposition 65 warning for MW Polar Oysters, Fancy
11 Whole, pursuant to Section 3.1 (1), then MW Polar shall provide the following warning:

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

15 If MW Polar provides a Proposition 65 warning for MW Polar Oysters, Fancy Whole,
16 Pursuant to Section 3.1(1), and if the average daily exposure level exceeds 15 micrograms of lead as
17 determined pursuant to the provisions set forth in Section 3.3 and 3.4, then MW Polar shall provide the
18 following warning:

19 [California Proposition 65] **WARNING: THIS PRODUCT CONTAINS LEAD,**
20 **A CHEMICAL KNOWN TO THE STATE OF CALIFORNIA TO CAUSE CANCER**
21 **AND BIRTH DEFECTS OR OTHER REPRODUCTIVE HARM, AND CADMIUM, A**
22 **CHEMICAL KNOWN TO THE STATE OF CALIFORNIA TO CAUSE BIRTH**
23 **DEFECTS OR OTHER REPRODUCTIVE HARM.**

24 3.2.3 In the above warnings, the words "California Proposition 65" may be included at
25 MW Polar's option. No additional language about Proposition 65 may accompany the Proposition 65
26 warning. MW Polar shall provide the applicable warning using both of the following methods:

27 1) On the label of the can or container (other than on the underside or bottom of the can
28 and/or container) of each individual unit of a Covered Product distributed to retail stores in California

1 and on a Covered Product shipped to California consumers.

2 2) On MW Polar's checkout page on its website for consumers who enter a shipping
3 address in California prior to completion of the sale. In the website warning, MW Polar shall identify
4 the specific Covered Products to which the warning applies.

5 MW Polar must display the above warnings with such conspicuousness, as compared with
6 other words, statements, or design of the label, can, or container to render the warning likely to be read
7 and understood by an ordinary individual under customary conditions of purchase or use of the
8 Covered Products. Each letter in the word "WARNING" must be in all capital letters and bold print.

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

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

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

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

1 **3.4.2** MW Polar shall not be required to engage in testing pursuant to this Consent
2 Judgment unless MW Polar determines that it will "distribute into the State of California" the
3 Covered Products without a warning. All testing pursuant to this Consent Judgment shall be
4 performed using a laboratory method that complies with the performance and quality control factors
5 appropriate for the method used, including limit of detection, limit of quantification, accuracy, and
6 precision and meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (ICP-
7 MS) achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing
8 method subsequently agreed upon in writing by the Parties.

9 **3.4.3** All testing pursuant to this Consent Judgment shall be performed
10 by an independent third-party laboratory certified by the California Environmental Laboratory
11 Accreditation Program for the analysis of heavy metals or a laboratory that is approved by,
12 accredited by, or registered with the United States Food & Drug Administration.

13 **4. SETTLEMENT PAYMENT**

14 **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil
15 penalties, attorneys' fees and costs in connection with claims regarding the Covered Products, MW
16 Polar shall make three payments totaling \$250,000.00. The first payment of \$150,000.00 shall be
17 made within ten (10) days of CTWG's counsel sending the Notice of Entry of Judgment via
18 electronic mail to MW Polar's counsel ("Trigger Date"). The second payment of \$50,000.00 shall
19 be made within sixty (60) days of the Trigger Date and the third payment of \$50,000.00 shall be
20 made within one hundred twenty (120) days of the Trigger Date.

21 **4.2** \$50,000.00 shall be payable as civil penalties pursuant to California Health and
22 Safety Code section 25249.7(b)(1). Of this amount, \$37,500.00 shall be payable to the Office of
23 Environmental Health Hazard Assessment ("OEHHA") and \$12,500.00 shall be payable to The
24 Chemical Toxin Working Group, Inc. pursuant to California Health and Safety Code sections
25 25249.12(c)(1) & (d). MW Polar shall send both civil penalty payments to Plaintiffs' counsel who
26 will be responsible for forwarding the civil penalty to OEHHA along with a copy of the transmittal
27 letter to MW Polar's counsel. The civil penalty payments shall be part of the first payment of
28 \$150,000.00.

1 **4.3** \$8,253.12 shall be payable to The Chemical Toxin Working Group, Inc. as
2 reimbursement to CTWG for (A) reasonable costs and expenses associated with the enforcement of
3 Proposition 65 and other costs incurred as a result of Plaintiffs' work in bringing this action; and
4 (B) \$134,222.82 shall be payable to The Chemical Toxin Working Group, Inc. in lieu of further
5 civil penalties, for day-to-day business activities such as continued enforcement of Proposition 65,
6 which includes work analyzing, researching and testing food and other consumer products that may
7 contain Proposition 65 chemicals.

8 **4.4** \$57,524.06 shall be payable to Michael Freund & Associates.

9 **4.5** MW Polar's first payment of \$150,000.00 shall be made by checks apportioned as
10 follows: \$37,500.00 payable to OEHHA for civil penalties and \$12,500.00 payable to The
11 Chemical Toxin Working Group, Inc. for civil penalties; \$72,475.94 payable to The Chemical
12 Toxin Working Group, Inc. as reimbursement of CTWG's costs and in lieu of further civil penalties;
13 and \$27,524.06 payable to Michael Freund & Associates as reimbursement of Plaintiffs' attorneys
14 fees. MW Polar's second payment of \$50,000.00 shall be made by checks apportioned as follows:
15 \$35,000.00 payable to The CTWG in lieu of further civil penalties and \$15,000.00 payable to
16 Michael Freund & Associates as reimbursement of Plaintiffs' attorneys' fees. MW Polar's third
17 payment of \$50,000.00 shall be made by checks apportioned as follows: \$35,000.00 payable to
18 The Chemical Toxin Working Group, Inc. in lieu of further civil penalties and \$15,000.00 payable
19 to Michael Freund & Associates as reimbursement of Plaintiffs' attorneys' fees.

20 **4.6** MW Polar shall mail or deliver the payments outlined in Section 4 (Settlement
21 Payment) herein in the form of checks addressed to Michael Freund & Associates, as stated in
22 Section 11 (Provision of Notice) herein. Within two (2) court days of the Effective Date, Plaintiffs
23 and their counsel will provide their taxpayer identification information and W-9 forms to MW Polar
24 by e-mail to enable MW Polar to process the payments.

25 **5. MODIFICATION OF CONSENT JUDGMENT**

26 **5.1** This Consent Judgment may be modified only by: (i) written agreement and
27 stipulation of the Parties and (ii) upon entry of a modified Consent Judgment by the Court.

28 **5.2** If MW Polar seeks to modify this Consent Judgment under Section 5.1, then

1 MW Polar must provide written notice to Plaintiffs of its intent ("Notice of Intent"), which
2 describes MW Polar's proposed modification. If Plaintiffs wish to meet and confer with MW Polar
3 regarding MW Polar's proposed modification, then Plaintiffs shall provide written notice of
4 Plaintiffs' intent to meet and confer to MW Polar within ten (10) days of receiving the Notice of
5 Intent. If Plaintiffs notify MW Polar in a timely manner of their intent to meet and confer, then the
6 Parties shall meet and confer in good faith as required in this Section. The Parties shall meet and
7 confer in person or by phone within ten (10) days of Plaintiffs' notification of their intent to meet
8 and confer. Within ten (10) days of such meeting, if either Plaintiff disputes the proposed
9 modification, that Plaintiff shall provide to MW Polar a written basis for its position. The Parties
10 shall continue to meet and confer for an additional ten (10) days in an effort to resolve any
11 remaining disputes. The Parties may agree in writing to different deadlines for the meet-and-confer
12 period.

13 **5.3** In the event that MW Polar initiates or otherwise requests a modification under
14 Section 5.1, MW Polar shall reimburse Plaintiffs their documented reasonable costs and reasonable
15 attorney's fees for the time spent in the meet-and-confer process and filing and arguing a joint
16 motion or application in support of a modification of the Consent Judgment; provided, however,
17 that these fees and costs shall not exceed \$8,000 total without the prior written consent of MW
18 Polar.

19 **5.4** Where the meet-and-confer process does not lead to a joint motion or
20 application in support of a modification of the Consent Judgment, then either Party may seek
21 judicial relief on its own. In such a situation, the prevailing party may seek to recover costs and
22 reasonable attorneys' fees. As used in the preceding sentence, the term "prevailing party" means a
23 party who is successful in obtaining relief more favorable to it than the relief that the other party
24 was amenable to providing during the Parties' good faith attempt to resolve the dispute that is the
25 subject of the modification.

26 **5.5** If any court in a case alleging that a defendant sold canned whole oysters, oyster
27 pieces, baby clams, smoked clams or canned mandarin oranges in syrup without providing clear and
28 reasonable warnings regarding the presence of lead or cadmium in violation of Proposition 65 renders

1 a final judgment that such products do not require a warning under Proposition 65 because the
2 average daily exposure is at or below the average daily exposure based on the exposure calculation
3 accepted by that court, then MW Polar shall be entitled to modify this Consent Judgment to eliminate
4 or modify the injunctive relief set forth in Section 3, consistent with the court judgment as described
5 herein, and considering any differences between the Covered Products Subject to Injunctive Relief
6 and the same products addressed in another settlement or court judgment. In addition, MW Polar
7 shall be entitled to modify this Consent Judgment to eliminate or modify the injunctive relief set forth
8 in Section 3 if (a) lead or cadmium is removed from the Proposition 65 list of chemicals; or (b) if any
9 court in a case alleging that a defendant sold canned whole oysters, oyster pieces, baby clams,
10 smoked clams or canned mandarin oranges in syrup without providing clear and reasonable warnings
11 regarding the presence of lead violation of Proposition 65 renders a final judgment that such products
12 do not require a warning under Proposition 65 because such warnings are preempted by federal law,
13 so long as such modification is consistent with the court judgment as described herein. Plaintiffs
14 shall not be entitled to object to any modifications sought under this Section 5.5, except based upon
15 an error in calculation of the average daily exposure. Prior to MW Polar seeking modification of this
16 Consent Judgment, MW Polar shall first invoke the meet and confer provisions set forth in Section
17 5.2. The reimbursement provisions of Sections 5.3 and 5.4 above are not applicable to modifications
18 sought under this Section 5.5. If Plaintiffs object to the calculation of the average daily exposure and
19 a court sustains the objections, MW Polar shall reimburse Plaintiffs their documented reasonable
20 costs and reasonable attorney's fees incurred to raise the objection. Any fees and costs related to a
21 sustained objection shall not exceed \$8,000 total without the prior written consent of MW Polar.

22 **6. RETENTION OF JURISDICTION; ENFORCEMENT OF CONSENT JUDGMENT**

23 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate
24 this Consent Judgment.

25 **6.2** Only after it complies with Section 15 below may any Party, by motion or
26 application for an order to show cause filed with this Court, enforce the terms and conditions
27 contained in this Consent Judgment.
28

1 6.3 If MW Polar determines that it will distribute for sale in the State of California, or
2 directly sell in the State of California any of the Covered Products without a Proposition 65 warning
3 in the future, and subsequently Plaintiffs allege that any such product fails to qualify as a
4 Reformulated Covered Product (for which a Plaintiff alleges that no warning has been provided),
5 then Plaintiffs shall inform MW Polar in a reasonably prompt manner of Plaintiffs' test results.
6 MW Polar shall, within thirty (30) days following such notice, provide Plaintiffs with testing
7 information, from an independent third-party laboratory meeting the requirements of Sections 3.4.2
8 and 3.4.3, demonstrating MW Polar's compliance with the Consent Judgment. The Parties shall
9 first attempt to resolve the matter prior to any Plaintiff taking any further legal action with the
10 Court.

11 **7. APPLICATION OF CONSENT JUDGMENT**

12 This Consent Judgment shall have no application to Covered Products which are distributed or
13 sold exclusively outside the State of California.

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

15 8.1 This Consent Judgment is a full, final, and binding resolution between Plaintiffs,
16 on behalf of themselves and in the public interest, and MW Polar, of any alleged violation of
17 Proposition 65 or its implementing regulations for failure to provide Proposition 65 warnings of
18 exposure to lead and cadmium from the handling, use, or consumption of the Covered Products and
19 fully resolves all claims that have been or could have been asserted in this Action up to and
20 including the Effective Date for failure to provide Proposition 65 warnings for exposure to lead
21 from the Covered Products and exposure to cadmium from the Covered Product MW Polar Foods
22 Oysters, Fancy Whole. Plaintiffs, on behalf of themselves and in the public interest, hereby
23 discharge and release MW Polar, its parents, subsidiaries, affiliated entities under common
24 ownership, directors, officers, agents, employees, attorneys, and each entity to or from whom MW
25 Polar directly or indirectly distributes or sells the Covered Products, including but not limited to,
26 downstream distributors, wholesalers, customers, retailers, franchises, cooperative members and
27 licensees (collectively, "Releasees") from any and all claims, actions, causes of action, suits,
28 demands, liabilities, damages, penalties, fees, costs and expenses asserted, or that could have been

1 asserted, as to any alleged violation of Proposition 65 arising from the failure to provide Proposition
2 65 warnings on the Covered Products regarding lead and the failure to provide Proposition 65
3 warnings on the Covered Product MW Polar Foods Oysters, Fancy Whole regarding cadmium as set
4 forth in the Notices of Violation and the Amended Complaint up to and including the Effective
5 Date.

6 **8.2** Each Plaintiff, on behalf of itself only, hereby releases and discharges the Releasees
7 from all claims, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses,
8 liabilities and demands of Plaintiffs of any nature, character, or kind, whether known or unknown,
9 suspected or unsuspected, arising out of alleged or actual exposures to lead in the Covered Products
10 and cadmium in the Covered Product MW Polar Foods Oysters, Fancy Whole as set forth in the
11 Notices of Violation and the Amended Complaint that have been or could have been asserted in this
12 Action up to and including the date of entry of Judgment for failure to provide Proposition 65
13 warnings for exposure to lead in the Covered Products and exposure to cadmium in the Covered
14 Product MW Polar Foods Oysters, Fancy. Each Plaintiff, on behalf of itself only, waives any and all
15 rights they may have under any applicable statute, including, but not limited to California Civil Code
16 Section 1542 or common law principle which would limit the effect of the release in Section 8.1 and
17 8.2 herein to those claims actually known or suspected to exist at the time of the date of entry of
18 Judgment. Plaintiffs have full knowledge of the contents of California Civil Code Section 1542
19 (emphasis added), which reads as follows:

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

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

27 **8.3** MW Polar's compliance with the terms of this Consent Judgment shall be deemed to
28

1 constitute compliance with Proposition 65 by the Releasees regarding alleged exposures to lead
2 and/or cadmium in the Covered Products as set forth in the Notices of Violation and the Amended
3 Complaint.

4 **8.4** Plaintiffs and MW Polar each release and waive all claims they may have
5 against each other for any statements or actions made or undertaken by them in connection with the
6 Notices of Violation or the Amended Complaint; provided, however, that nothing in Section 8
7 (Binding Effect, Claims Covered and Released) shall affect or limit any Party's right to seek to
8 enforce the terms of this Consent Judgment.

9 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

12 **10. GOVERNING LAW**

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

15 **11. PROVISION OF NOTICE**

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

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

20 David Steinman
21 The Chemical Toxin Working Group, Inc.
22 1801 Chart Trail
23 Topanga, CA 90290

24 **With a copy to:**

25 Michael Freund
26 Michael Freund & Associates
27 1919 Addison Street, Suite 105
28 Berkeley, CA 94704

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1 **FOR MW POLAR FOODS, INC.:**

2 Fred Chiu
3 MW Polar Foods, Inc.
4 15203 Shoemaker Avenue
5 Norwalk, CA 90650

6 **With a copy to:**

7 Matthew Lewis
8 White & Case LLP
9 555 S. Flower St., Suite 2700
10 Los Angeles, CA 90071-2433
11 mlewis@whitocase.com

12 **12. COURT APPROVAL**

13 12.1 If this Consent Judgment is not approved by the Court, it shall be void and have no
14 force or effect.

15 12.2 Plaintiffs shall comply with California Health and Safety Code section
16 25249.7(f) and with Title 11 of the California Code Regulations, Section 3003.

17 **13. EXECUTION AND COUNTERPARTS**

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

21 **14. DRAFTING**

22 The terms of this Consent Judgment have been reviewed by the respective counsel for the each
23 Party to this settlement prior to its signing, and each Party has had an opportunity to fully discuss the
24 terms with counsel. The Parties agree that, in any subsequent interpretation and construction of this
25 Consent Judgment entered thereon, the terms and provisions shall not be construed against any Party.

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

27 If a dispute arises with respect to any Party's compliance with the terms of this Consent
28 Judgment entered by the Court, the Parties shall meet in person or by telephone and endeavor to
resolve the dispute in an amicable manner. No action or motion may be filed in the absence of such a
good faith attempt to resolve the dispute beforehand. In the event an action or motion is filed,
however, the prevailing party may seek to recover costs and reasonable attorneys' fees. As used in the

1 preceding sentence, the term "prevailing party" means a party who is successful in obtaining relief
2 more favorable to it than the relief that the other party was amenable to providing during the parties'
3 good faith attempt to resolve the dispute that is the subject of such enforcement action.

4 **16. ENTIRE AGREEMENT, AUTHORIZATION**

5 a. This Consent Judgment contains the sole and entire agreement and
6 understanding of the Parties with respect to the entire subject matter herein, and any and all prior
7 discussions, negotiations, commitments and understandings related hereto. No representations, oral
8 or otherwise, express or implied, other than those contained herein have been made by any Party.
9 No other agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to
10 exist or to bind any Party.

11 16.2 Each signatory to this Consent Judgment certifies that he or she is fully authorized by
12 the Party he or she represents to stipulate to this Consent Judgment. Except as explicitly provided
13 herein, each Party shall bear its own fees and costs.

14 **17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
15 **CONSENT JUDGMENT**

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

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

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

1 IT IS SO STIPULATED:
2

3 Dated: 10/2, 2015

4 **DAVID STEINMAN**
5 By: [Signature]
6 David Steinman

7 Dated: 10/2, 2015

8 **THE CHEMICAL TOXIN WORKING**
9 **GROUP INC.**
10 By: [Signature]
11 David Steinman, Director

12 Dated: OCT. 2nd, 2015

13 **MW POLAR FOODS**
14 By: [Signature]
15 Fred Chitt, Executive Vice President

16 APPROVED AS TO FORM:

17 Dated: 10/2, 2015

18 **MICHAEL FREUND & ASSOCIATES**
19 By: [Signature]
20 Michael Freund
21 Ryan Hoffman
22 Attorney for David Steinman and The
23 Chemical Toxin Working Group, Inc.

24 Dated: Oct. 2, 2015

25 **WHITE & CASE LLP**
26 By: [Signature]
27 Matthew Lewis
28 Attorneys for Defendants MW Polar Foods,
Inc. and Milky Way International Trading
Corporation dba MW Polar Foods, Inc.

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ORDER AND JUDGMENT

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

Dated: _____, 2015

Judge Wynne Carvill

LAW OFFICE OF
MICHAEL FREUND

1219 ADDISON STREET, SUITE 108
BERKELEY, CALIFORNIA 94704-1101

TEL (510) 540-1992
FAX (510) 540-3543
EMAIL FREUND1@AOL.COM

February 24, 2012

VIA CERTIFIED MAIL

Frederick Chio, CEO
MW Polar Foods, Inc.
15203 Shoemaker Ave.
Norwalk, CA 90650

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

Re: Notice of Violation Against MW Polar Foods, Inc. for Violation of California Health & Safety Code Section 25249.5 et seq.

Dear Addressees:

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

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

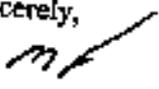
MW Polar Oysters, Fancy Whole – lead

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

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

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

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

Sincerely,

Michael Freund

cc: David Steinman

Attachments:

- Certificate of Merit
- Certificate of Service
- OEHHA Summary to MW Polar Foods, Inc.
- Additional Supporting Information for Certificate of Merit (to Attorney General only)

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7 (d)

I, Michael Freund hereby declare:

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

the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.

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

Dated: February 23, 2012



Michael Freund
Attorney for David Steinman

CERTIFICATE OF SERVICE

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

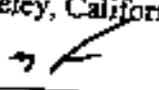
Notice of Violation and Certificate of Merit Against MW Polar Foods, Inc. for Violation of California Health & Safety Code Section 25249.5 et seq. (Supporting Documentation sent to Attorney General only)

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

See attached Service List

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

Executed on February 27, 2012 at Berkeley, California.



Michael Freund

SERVICE LIST

- District Attorney of Alameda County
1225 Fallon Street, Room 900
Oakland, CA 94612
- District Attorney of Colusa County
547 Market Street
Colusa, CA 95932
- District Attorney of Contra Costa County
627 Ferry Street
Martinez, CA 94553
- District Attorney of Alpine County
P.O. Box 248
Markleville, CA 96120
- District Attorney of Del Norte County
450 H Street, Ste 171
Crescent City, CA 95531
- District Attorney of Amador County
708 Court Street, #202
Jackson, CA 95842
- District Attorney of Butte County
25 County Center Drive
Oroville, CA 95965
- District Attorney of El Dorado County
515 Main Street
Placerville, CA 95687
- District Attorney of Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249
- District Attorney of Fresno County
2220 Tulera Street, #1000
Fresno, CA 93721
- District Attorney of Glenn County
P.O. Box 430
Willows, CA 95986
- District Attorney of Kings County
1400 West Lacey
Hanford, CA 93230
- District Attorney of Lake County
255 N. Forbes Street
Lakeport, CA 95453
- District Attorney of Humboldt County
825 5th Street
Eureka, CA 95501
- District Attorney of Imperial County
939 Main Street
El Centro, CA 92243
- District Attorney of Lassen County
220 S. Lassen St., Ste 8
Susanville, CA 96130
- District Attorney of Inyo County
P.O. Drawer D
Independence, CA 93526
- District Attorney of Los Angeles County
210 W. Temple Street, Room 345
Los Angeles, CA 90012
- District Attorney of Madera County
209 West Yosemite Avenue
Madera, CA 93637
- District Attorney of Kern County
1215 Trudun Avenue
Bakersfield, CA 93301
- District Attorney of Marin County
3601 Chic Center Dr., Room 130
San Rafael, CA 94903
- District Attorney of Mono County
P.O. Box 817
Bridgeport, CA 93517
- District Attorney of Mariposa County
P.O. Box 730
Mariposa, CA 95338
- District Attorney of Monterey County
230 Church Street, Bldg. 2
Salinas, CA 93901
- District Attorney of Mendocino County
P.O. Box 1000
Ukiah, CA 95482
- District Attorney of Napa County
931 Parkway Mall
Napa, CA 94556
- District Attorney of Merced County
2222 "M" Street
Merced, CA 95340
- District Attorney of Nevada County
201 Church St., Suite B
Nevada City, CA 95959
- District Attorney of Orange County
401 Civic Ctr Drive West
Santa Ana, CA 92701
- District Attorney of Modoc County
204 S Court Street
Alturas, CA 96101-4020
- District Attorney of Placer County
11562 "B" Avenue
Auburn, CA 95603
- District Attorney of San Bernardino County
316 N. Mountain View Avenue
San Bernardino, CA 92415
- District Attorney of Plumas County
520 Main Street, Room 404
Quincy, CA 95971
- District Attorney of San Diego County
330 West Broadway, Suite 1320
San Diego, CA 92101
- District Attorney of Riverside County
4075 Main Street
Riverside, CA 92501
- District Attorney of San Francisco County
850 Bryant Street, Rm 325
San Francisco, CA 94103
- District Attorney of Sacramento County
901 "G" Street
Sacramento, CA 95814
- District Attorney of San Joaquin County
P.O. Box 990
Stockton, CA 95201
- District Attorney of San Luis Obispo County
1050 Monterey St, Room 450
San Luis Obispo, CA 93409
- District Attorney of San Benito County
412 Fourth Street, 2nd Floor
Hollister, CA 95023

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

District Attorney of Sierra County
Courthouse, P.O. Box 457
Downsville, CA 95636

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

District Attorney of Siskiyou County
P.O. Box 288
Yreka, CA 96097

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

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

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

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

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

District Attorney of Stanislaus
County
800 11th Street, Room 200
PO Box 442
Modesto, CA 95363

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

District Attorney of Ventura County
800 South Victoria Ave
Ventura, CA 93008

District Attorney of Tehama County
P.O. Box 218
Red Bluff, CA 96080

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

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

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

District Attorney of Tulare County
221 S. Modway Ave, Room 224
Visalia, CA 93281

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

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

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

San Diego City Attorney's Office
1200 3rd Avenue #1820
San Diego, CA 92101

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

California Attorney General's
Office
Attention: Proposition 65
Coordinator
1515 Clay Street, Suite 2000
P.O. Box 70566
Oakland, CA 94612

CHLO, CEO
Foods, Inc.
Snoemaker Ave.
Norwalk, CA 90650

LAW OFFICE OF
MICHAEL FREUND

1919 ADAMS STREET, SUITE 108
BERKELEY, CALIFORNIA 94704-1101

TEL (510) 540-1992
FAX (510) 540-5343
EMAIL FREUND1@AOL.COM

March 29, 2013

VIA CERTIFIED MAIL

Frederick Chio, CEO
Milky Way International Trading
Corporation, dba MW Polar Foods, Inc.
15203 Shoemaker Ave.
Norwalk, CA 90650

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

Re: **Notice of Violation Against Milky Way International Trading Corporation, dba
MW Polar Foods, Inc. for Violation of California Health & Safety Code Section 25249.5
et seq.**

Dear Addressees:

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

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

MW Polar Pieces Oysters – lead

MW Polar Foods has manufactured, marketed, distributed and/or sold the listed product which

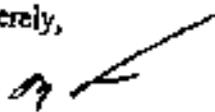
has exposed and continues to expose numerous individuals within California to lead. This chemical was listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer on October 1, 1992 and as a chemical known to cause developmental toxicity, and male and female reproductive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

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

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

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

Sincerely,



Michael Freund

cc: The Chemical Toxin Working Group

Attachments:

Certificate of Merit

Certificate of Service

OEHHA Summary to Milky Way International Trading Corporation, dba MW Polar Foods, Inc.

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

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7 (d)

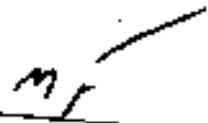
I, Michael Freund hereby declare:

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

plaintiff's case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.

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

Dated: March 29, 2013

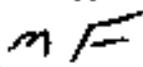


Michael Freund
Attorney for The Chemical Toxin Working Group

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the County of Alameda. I am over the age of eighteen years and not a party to the within entitled action. My business address is 1919 Addison Street, Suite 105, Berkeley, California 94704. On March 29, 2013 I served the within:
Notice of Violation Against MW Polar Foods, Inc. for Violation of California Health & Safety Code Section 25249.5 et seq. and Certificate of Merit (Supporting Documentation sent to Attorney General only)
by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box in Berkeley, California addressed to the names set forth on the Notice of Violation and on the attached Service List.

I, Michael Freund, declare under penalty of perjury that the foregoing is true and correct. Executed on March 29, 2013 at Berkeley, California



Michael Freund

Service List

- District Attorney, Alameda County
223 Fallon Street, Suite 900
Oakland, CA 94612
- District Attorney, Alpine County
401 Hwy 248
Markleville, CA 96120
- District Attorney, Amador County
1000 Main Street, Suite 202
Jackson, CA 95821
- District Attorney, Butte County
County Center Drive, Suite 245
Dunsmuir, CA 95965
- District Attorney, Calaveras County
200 Mountain Ranch Road
Mariposa, CA 95249
- District Attorney, Colusa County
200 7th Street, Suite 101
Colusa, CA 95932
- District Attorney, Contra Costa County
1000 Main Street
Walpole, CA 94597
- District Attorney, Del Norte County
2501 Street, Room 171
Eureka, CA 95531
- District Attorney, El Dorado County
100 Main Street
Flora Vista, CA 95667
- District Attorney, Fresno County
220 Tenth Street, Suite 1000
Fresno, CA 93701
- District Attorney, Glenn County
1000 Main Street
Glenn, CA 95924
- District Attorney, Humboldt County
250 3rd Street, 4th Floor
Eureka, CA 95501
- District Attorney, Imperial County
10 West Main Street, Ste 102
Imperial, CA 92343
- District Attorney, Inyo County
1000 Main Street
Inyo, CA 93742
- District Attorney, Kern County
1000 Main Avenue
Arvin, CA 93501
- District Attorney, Kings County
1000 Main Lacey Boulevard
Hanford, CA 93230
- District Attorney, Lake County
1000 Main Street
Lakeview, CA 95453
- District Attorney, Lassen County
1000 Main Street, Ste 3
Marysville, CA 95951
- District Attorney, Los Angeles County
210 West Temple Street, Suite 1800
Los Angeles, CA 90013
- District Attorney, Madera County
209 West Yosemite Avenue
Madera, CA 93637
- District Attorney, Marin County
1507 Civic Center Drive, Room 130
San Rafael, CA 94903
- District Attorney, Mariposa County
Post Office Box 750
Mariposa, CA 95338
- District Attorney, Mendocino County
Post Office Box 1000
Ukiah, CA 95422
- District Attorney, Merced County
550 W. Main Street
Merced, CA 95340
- District Attorney, Modoc County
224 S. Court Street, Room 202
Alturas, CA 96101-4020
- District Attorney, Mono County
Post Office Box 617
Bridgeport, CA 95317
- District Attorney, Monterey County
Post Office Box 1131
Salinas, CA 95302
- District Attorney, Napa County
431 Parkway Mall
Napa, CA 94559
- District Attorney, Nevada County
100 Main Street
Nevada City, CA 95959
- District Attorney, Orange County
401 West Civic Center Drive
Santa Ana, CA 92701
- District Attorney, Placer County
10810 Justice Center Drive, Ste 240
Roseville, CA 95678
- District Attorney, Plumas County
520 Main Street, Room 404
Quincy, CA 95971
- District Attorney, Riverside County
3960 Orange Street
Riverside, CA 92501
- District Attorney, Sacramento County
901 "G" Street
Sacramento, CA 95814
- District Attorney, San Benito County
419 Fourth Street, 2nd Floor
Fowler, CA 95023
- District Attorney, San Bernardino County
550 N. Mountain View Avenue
San Bernardino, CA 92415-0604
- District Attorney, San Diego County
330 West Broadway, Suite 1300
San Diego, CA 92101
- District Attorney, San Francisco County
450 Bryant Street, Suite 322
San Francisco, CA 94103
- District Attorney, San Joaquin County
222 E. Weber Ave., Rm. 202
Stockton, CA 95202
- District Attorney, San Luis Obispo County
1035 Palm St., Room 450
San Luis Obispo, CA 93408
- District Attorney, San Mateo County
400 County Cir., 3rd Floor
Redwood City, CA 94063
- District Attorney, Santa Barbara County
1112 Santa Barbara Street
Santa Barbara, CA 93101
- District Attorney, Santa Clara County
70 West Hedding Street
San Jose, CA 95110
- District Attorney, Santa Cruz County
701 Ocean Street, Room 300
Santa Cruz, CA 95060
- District Attorney, Shasta County
1355 West Street
Redding, CA 96001
- District Attorney, Sierra County
PO Box 457
Downsville, CA 95936
- District Attorney, Siskiyou County
Post Office Box 986
Yreka, CA 96097
- District Attorney, Solano County
675 Texas Street, Ste 4900
Fairfield, CA 94533
- District Attorney, Sonoma County
600 Administration Drive,
Room 2123
Santa Rosa, CA 95403
- District Attorney, Stanislaus County
832 12th Street, Ste 300
Modesto, CA 95354
- District Attorney, Sutter County
446 Second Street
Yuba City, CA 95691
- District Attorney, Tehama County
Post Office Box 519
Red Bluff, CA 96080
- District Attorney, Trinity County
Post Office Box 310
Weaverville, CA 96093
- District Attorney, Tulare County
221 S. Mooney Blvd., Room 224
Visalia, CA 95201
- District Attorney, Tuolumne County
423 N. Washington Street
Sonora, CA 95370
- District Attorney, Ventura County
800 South Victoria Ave., Suite 314
Ventura, CA 93009
- District Attorney, Yolo County
501 2nd Street
Woodland, CA 95693
- District Attorney, Yuba County
215 Fifth Street, Suite 152
Marysville, CA 95901
- Los Angeles City Attorney's Office
City Hall East
200 N. Main Street, Suite 800
Los Angeles, CA 90012
- San Diego City Attorney's Office
1200 3rd Avenue, Ste 1620
San Diego, CA 92101
- San Francisco City Attorney
City Hall, Room 234
1 Dr Carlton B Goodlett, Jr.
San Francisco, CA 94102
- San Jose City Attorney's Office
200 East Santa Clara Street,
16th Floor
San Jose, CA 95113

LAW OFFICE OF
MICHAEL FREUND

1818 ADDISON STREET, SUITE 106
BERKELEY, CALIFORNIA 94704-1701

TEL (510) 540-1992
FAX (510) 540-8843
EMAIL FREUND1@AOL.COM

July 9, 2013

VIA CERTIFIED MAIL

Frederick Chio, CEO
MW Polar Foods, Inc.
15203 Shoemaker Ave.
Norwalk, CA 90650

VIA PRIORITY MAIL

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

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

Re: Notice of Violation Against MW Polar Foods, Inc. for Violation of California Health & Safety Code Section 25249.5 et seq.

Dear Addressees:

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

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

- MW Polar Baby Clams - lead
- MW Polar Smoked Clams in Oil - lead
- Four Seasons Mandarin Oranges in Light Syrup - lead
- MW Polar Mushrooms Slices - lead
- MW Polar Shitake Sliced Mushroom Portabella Style - lead

MW Polar Foods has manufactured, marketed, distributed and/or sold the listed products which have exposed and continue to expose numerous individuals within California to lead. This chemical was listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer on October 1, 1992 and as a chemical known to cause developmental toxicity, and male and female reproductive toxicity on February 27, 1987. These violations have occurred every day since at least July 9, 2010, and will continue every day until the lead is removed from the noticed products or until clear and reasonable warnings are provided. The primary route of exposure has been through ingestion.

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

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

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

Sincerely,



Michael Freund

cc: The Chemical Toxin Working Group

Attachments:

Certificate of Merit

Certificate of Service

OEHHA Summary to MW Polar Foods, Inc.

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

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7 (d)

I, Michael Freund hereby declare:

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

plaintiff's case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.

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

Dated: July 3, 2013



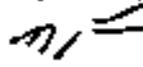
Michael Freund
Attorney for The Chemical Toxin Working Group

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the County of Alameda. I am over the age of eighteen years and not a party to the within entitled action. My business address is 1919 Addison Street, Suite 105, Berkeley, California 94704. On July 9, 2013 I served the within:

Notice of Violation Against MW Polar Foods, Inc. for Violation of California Health & Safety Code Section 25249.5 et seq. and Certificate of Merit (Supporting Documentation sent to Attorney General only)
by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box in Berkeley, California addressed to the names set forth on the Notice of Violation and on the attached Service List.

I, Michael Freund, declare under penalty of perjury that the foregoing is true and correct. Executed on July 9, 2013 at Berkeley, California



Michael Freund

Service List

- District Attorney, Alameda County
1275 Union Street, Suite 900
Oakland, CA 94612
- District Attorney, Alpine County
P.O. Box 148
Marblehead, CA 96120
- District Attorney, Amador County
708 Court Street, Suite 202
Jackson, CA 95842
- District Attorney, Butte County
15 County Center Drive, Suite 245
Orville, CA 95965
- District Attorney, Calaveras County
191 Mountain Ranch Road
San Andreas, CA 95249
- District Attorney, Colusa County
25 Fifth Street, Suite 101
Colusa, CA 95932
- District Attorney, Contra Costa County
30 Ward Street
Orinda, CA 94553
- District Attorney, Del Norte County
1711 Street, Room 171
Eureka City, CA 95531
- District Attorney, El Dorado County
5 Main Street
Cerverse, CA 95667
- District Attorney, Fresno County
107 Tulare Street, Suite 1000
Fresno, CA 93721
- District Attorney, Glenna County
Office Box 430
Humboldt, CA 95948
- District Attorney, Humboldt County
14th Street 4th Floor
Eureka, CA 95501
- District Attorney, Imperial County
West Main Street, Ste 102
Imperial, CA 92243
- District Attorney, Inyo County
7 Line Street
Inyo, CA 93314
- District Attorney, Kern County
Tuzza Avenue
Arvin, CA 93301
- District Attorney, Kings County
West Lacey Boulevard
Lacey, CA 93230
- District Attorney, Lake County
Forbes Street
Lakeview, CA 95453
- District Attorney, Lassen County
14th Lassen Street, Ste. B
Lassen, CA 96130
- District Attorney, Los Angeles County
210 West Temple Street, Suite 18000
Los Angeles, CA 90012
- District Attorney, Madera County
209 West Yosemite Avenue
Madera, CA 93637
- District Attorney, Marin County
3501 Civic Center Drive, Room 130
San Rafael, CA 94903
- District Attorney, Mariposa County
Post Office Box 730
Mariposa, CA 95334
- District Attorney, Mendocino County
Post Office Box 1000
Ukiah, CA 95482
- District Attorney, Merced County
550 W. Main Street
Merced, CA 95340
- District Attorney, Modoc County
204 S Court Street, Room 202
Altama, CA 96101-4020
- District Attorney, Mono County
Post Office Box 617
Bridgeport, CA 93517
- District Attorney, Monterey County
Post Office Box 3131
Salinas, CA 9 942
- District Attorney, Napa County
921 Parkway Mall
Napa, CA 94559
- District Attorney, Nevada County
110 Union Street
Nevada City, CA 95959
- District Attorney, Orange County
401 West Civic Center Drive
Santa Ana, CA 92701
- District Attorney, Placer County
10010 Justice Center Drive, Ste 240
Roseville, CA 95678
- District Attorney, Plumas County
520 Main Street, Room 404
Quincy, CA 95971
- District Attorney, Riverside County
3960 Omega Street
Riverside, CA 92501
- District Attorney, Sacramento County
901 40th Street
Sacramento, CA 95814
- District Attorney, San Benito County
419 Fourth Street, 2nd Floor
Hollister, CA 95023
- District Attorney, San Bernardino County
316 N. Mountain View Avenue
San Bernardino, CA 92415-0004
- District Attorney, San Diego County
330 West Broadway, Suite 1300
San Diego, CA 92101
- District Attorney, San Francisco County
850 Bryant Street, Suite 322
San Francisco, CA 94103
- District Attorney, San Joaquin County
222 B. Weber Ave. Rm. 202
Stockton, CA 95202
- District Attorney, San Luis Obispo County
1035 Palm St, Room 450
San Luis Obispo, CA 93408
- District Attorney, San Mateo County
400 County Cir., 3rd Floor
Redwood City, CA 94063
- District Attorney, Santa Barbara County
1112 Santa Barbara Street
Santa Barbara, CA 93101
- District Attorney, Santa Clara County
70 West Hedding Street
San Jose, CA 95110
- District Attorney, Santa Cruz County
701 Ocean Street, Room 200
Santa Cruz, CA 95060
- District Attorney, Shasta County
1255 West Street
Redding, CA 96001
- District Attorney, Sierra County
PO Box 457
Downsville, CA 95936
- District Attorney, Siskiyou County
Post Office Box 956
Yreka, CA 96097
- District Attorney, Solano County
675 Texas Street, Ste 4500
Fairfield, CA 94533
- District Attorney, Sonoma County
600 Administration Drive,
Room 212J
Santa Rosa, CA 95403
- District Attorney, Stanislaus County
832 12th Street, Ste 300
Modesto, CA 95354
- District Attorney, Sutter County
446 Second Street
Yuba City, CA 95991
- District Attorney, Tehama County
Post Office Box 519
Red Bluff, CA 96080
- District Attorney, Trinity County
Post Office Box 310
Weaverville, CA 96093
- District Attorney, Tulare County
221 S. Mooney Blvd., Room 224
Visalia, CA 93291
- District Attorney, Tulare County
423 N. Washington Street
Searsville, CA 95370
- District Attorney, Ventura County
800 South Victoria Ave, Suite 314
Ventura, CA 93009
- District Attorney, Yuba County
301 2nd Street
Woodland, CA 95695
- District Attorney, Yuba County
215 Fifth Street, Suite 152
Marysville, CA 95901
- Los Angeles City Attorney's Office
City Hall East
200 N. Main Street, Suite 800
Los Angeles, CA 90012
- San Diego City Attorney's Office
1200 3rd Avenue, Ste 1620
San Diego, CA 92101
- San Francisco City Attorney
City Hall, Room 294
1 Dr Carlton B Goodlett Pl.
San Francisco, CA 94102
- San Jose City Attorney's Office
200 East Santa Clara Street,
16th Floor
San Jose, CA 95113

EXHIBIT B

Michael Freund & Associates

1919 Addison Street, Suite 115
Berkeley, CA 94704
Voice: 510.540.1992 - Fax: 510.540.5543

Michael Freund, Esq.
Ryan Hoffman, Esq.

OF COUNSEL:
Denise Ferkich Hoffman, Esq.

November 12, 2013

VIA CERTIFIED MAIL

Frederick Chio, CEO
MW Polar Foods, Inc.
15203 Shoemaker Ave.
Norwalk, CA 90650

VIA PRIORITY MAIL

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

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

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

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

This letter constitutes notification that MW Polar Foods, Inc. ("MW Polar") has violated the warning requirement of Proposition 65, the Safe Drinking Water and Toxic enforcement Act (commencing with Section 25249.5 of the Health and Safety Code). The product subject to this Notice of Violation and the chemical in the product identified as exceeding allowable levels are:

MW Polar Fancy Whole Smoked Oysters - Cadmium

MW Polar has manufactured, marketed, distributed and/or sold the above product which has exposed and continues to expose numerous individuals within California to cadmium. This chemical was listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer on October 1, 1987 and as a chemical known to cause developmental toxicity, and male reproductive toxicity on May 1, 1997. These violations have occurred every day since at least November 12, 2010, as well as every day since the product was introduced into

the California marketplace and will continue every day until cadmium is removed from the noticed product, reduced to allowable levels or until clear and reasonable warnings are provided. The primary route of exposure has been through ingestion but may have also occurred through inhalation and/or dermal contact.

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

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

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

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

Sincerely,



Michael Freund

cc: The Chemical Toxin Working Group, Inc.

Attachments:

Certificate of Merit

Certificate of Service

OEHHA Summary to MW Polar Foods, Inc.

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

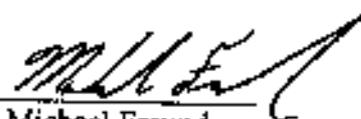
CERTIFICATE OF MERIT

**Re: The Chemical Toxin Working Group Inc.'s Notice of Proposition 65 Violations
by MW Polar Foods, Inc.**

I, Michael Freund hereby declare:

1. This Certificate of Merit accompanies the attached Notice of Violation in which it is alleged that the party identified in the Notice has violated Health and Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party The Chemical Toxin Working Group, Inc. The Notice of Violation alleges that the party identified has exposed persons in California to the listed chemical that is the subject of this Notice. Please refer to the Notice of Violation for additional details regarding the product name(s) and alleged violations.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the subject of this Notice. I have reviewed the laboratory testing results for the chemical subject to this Notice and relied on these results. The testing was conducted by a reputable testing laboratory by experienced scientists. The facts, studies or other data derived through this investigation overwhelmingly demonstrate that the party identified in the Notice of Violation exposes persons to the listed chemical that is the subject of this Notice.
4. Based on the information obtained through these consultants and on other information in my possession, I believe there is sufficient evidence that human exposures exist from exposure to the listed product from the noticed party. Furthermore, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
5. The copy of this Certificate of Merit served on the California Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & Safety Code Section 25249.7 (h) (2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies or other data reviewed by those persons.

Dated: November 12, 2013



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

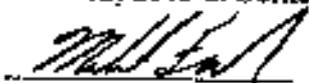
CERTIFICATE OF SERVICE

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

Notice of Violation Against MW Polar Foods, Inc. for Violation of California Health & Safety Code Section 25249.5 et seq. and Certificate of Merit (Supporting Documentation sent to Attorney General only)

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

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


Michael Freund

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

Service List

- District Attorney, Alameda County
1225 Fallon Street, Suite 900
Oakland, CA 94612
- District Attorney, Alpine County
P.O. Box 248
Markleevale, CA 96120
- District Attorney, Amador County
708 Court Street, Suite 202
Jackson, CA 95842
- District Attorney, Butte County
25 County Center Drive, Suite 245
Fresno, CA 95865
- District Attorney, Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249
- District Attorney, Colusa County
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Colusa, CA 95932
- District Attorney, Contra Costa County
400 Ward Street
Martinez, CA 94553
- District Attorney, Del Norte County
450 H Street, Room 171
Crescent City, CA 95531
- District Attorney, El Dorado County
111 Main Street
Placerville, CA 95667
- District Attorney, Fresno County
1120 Tulare Street, Suite 1000
Fresno, CA 93721
- District Attorney, Glenn County
Post Office Box 430
Willows, CA 95988
- District Attorney, Humboldt County
625 5th Street 4th Floor
Eureka, CA 95501
- District Attorney, Imperial County
920 West Main Street, Ste 102
El Centro, CA 92243
- District Attorney, Inyo County
230 W. Line Street
Bishop, CA 93514
- District Attorney, Kern County
1255 Truxtun Avenue
Bakersfield, CA 93301
- District Attorney, Kings County
1400 West Lacey Boulevard
Hanford, CA 93230
- District Attorney, Lake County
255 N. Forbes Street
Lakeport, CA 95453
- District Attorney, Lassen County
220 South Lassen Street, Ste. 8
Susanville, CA 96130
- District Attorney, Los Angeles County
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Los Angeles, CA 90012
- District Attorney, Madera County
209 West Yosemite Avenue
Madera, CA 93637
- District Attorney, Marin County
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San Rafael, CA 94903
- District Attorney, Mariposa County
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Mariposa, CA 95338
- District Attorney, Mendocino County
Post Office Box 1000
Ukiah, CA 95482
- District Attorney, Merced County
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Merced, CA 95340
- District Attorney, Modoc County
204 S. Court Street, Room 202
Alturas, CA 96101-4020
- District Attorney, Mono County
Post Office Box 617
Bridgeport, CA 93517
- District Attorney, Monterey County
Post Office Box 1131
Salinas, CA 95902
- District Attorney, Napa County
931 Parkway Mall
Napa, CA 94559
- District Attorney, Nevada County
110 Union Street
Nevada City, CA 95959
- District Attorney, Orange County
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Santa Ana, CA 92701
- District Attorney, Placer County
10810 Justice Center Drive, Ste 240
Roseville, CA 95678
- District Attorney, Plumas County
520 Main Street, Room 404
Quincy, CA 95971
- District Attorney, Riverside County
3960 Orange Street
Riverside, CA 92503
- District Attorney, Sacramento County
901 "G" Street
Sacramento, CA 95814
- District Attorney, San Benito County
419 Fourth Street, 2nd Floor
Hollister, CA 95023
- District Attorney, San Bernardino County
316 N. Mountain View Avenue
San Bernardino, CA 92415-0004
- District Attorney, San Diego County
330 West Broadway, Suite 1300
San Diego, CA 92101
- District Attorney, San Francisco County
850 Bryant Street, Suite 322
San Francisco, CA 94103
- District Attorney, San Joaquin County
222 E. Weber Ave. Rm. 202
Stockton, CA 95202
- District Attorney, San Luis Obispo County
1035 Palm St, Room 450
San Luis Obispo, CA 93408
- District Attorney, San Mateo County
400 County Ct., 3rd Floor
Redwood City, CA 94063
- District Attorney, Santa Barbara County
1112 Santa Barbara Street
Santa Barbara, CA 93101
- District Attorney, Santa Clara County
70 West Hedding Street
San Jose, CA 95110
- District Attorney, Santa Cruz County
701 Ocean Street, Room 200
Santa Cruz, CA 95060
- District Attorney, Shasta County
1355 West Street
Redding, CA 96001
- District Attorney, Sierra County
PO Box 457
Downsville, CA 95936
- District Attorney, Siskiyou County
Post Office Box 986
Yreka, CA 96097
- District Attorney, Solano County
675 Texas Street, Ste 4500
Fairfield, CA 94533
- District Attorney, Sonoma County
600 Administration Drive,
Room 2123
Santa Rosa, CA 95403
- District Attorney, Stanislaus County
832 12th Street, Ste 300
Modesto, CA 95354
- District Attorney, Sutter County
446 Second Street
Yuba City, CA 95991
- District Attorney, Tehama County
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Red Bluff, CA 96080
- District Attorney, Trinity County
Post Office Box 310
Weaverville, CA 96093
- District Attorney, Tulare County
221 S. Mooney Blvd., Room 224
Visalia, CA 93278
- District Attorney, Tuolumne County
423 N. Washington Street
Sonoma, CA 95370
- District Attorney, Ventura County
800 South Victoria Ave. Suite 314
Ventura, CA 93009
- District Attorney, Yolo County
301 2nd Street
Woodland, CA 95695
- District Attorney, Yuba County
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Marysville, CA 95901
- Los Angeles City Attorney's Office
City Hall East
200 N. Main Street, Suite 800
Los Angeles, CA 90012
- San Diego City Attorney's Office
1200 3rd Avenue, Ste 1620
San Diego, CA 92101
- San Francisco, City Attorney
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1 De Carlton B. Goodlett Pl.
San Francisco, CA 94102
- San Jose City Attorney's Office
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San Jose, CA 95113