

1 JAMES KAWAHITO (SBN 234851)  
KAWAHITO LAW GROUP APC  
2 300 Corporate Pointe, Suite 340  
Culver City, California 90230  
3 Telephone: (310) 746-5300  
Facsimile: (310) 593-2520  
4 Email: jkawahito@kawahitolaw.com

5  
6 Attorneys for Plaintiff Public Health and Safety Advocates, LLC

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
8 **COUNTY OF LOS ANGELES**

9 PUBLIC HEALTH AND SAFETY  
10 ADVOCATES, LLC., a Limited Liability  
Company, in the public interest,

11 Plaintiff,

12 vs.

13  
14 H & T SEAFOOD, INC., a California  
Corporation and DOES 1 through 50,  
15 inclusive,

16 Defendants.

Case No.: 21STCV21484

**[PROPOSED] STIPULATED CONSENT  
JUDGMENT**

**HEALTH AND SAFETY CODE §  
25249.6**

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **1. INTRODUCTION**

2 **1.1. Public Health and Safety Advocates, LLC. and H&T Seafood, Inc.**

3 This Consent Judgment is entered into by and between plaintiff Public Health and Safety  
4 Advocates, LLC (“PHSA” or “Plaintiff”) and defendant H&T Seafood, Inc. (“H&T” or  
5 “Defendant”) with H&T and PHSA each individually referred to as a “Party” and collectively as  
6 the “Parties.”

7 **1.2. Plaintiff**

8 PHSA is a limited liability company duly organized and existing in the State of California,  
9 which seeks to promote awareness of exposures to toxic chemicals and to improve human health  
10 by reducing or eliminating hazardous substances used in consumer products.

11 **1.3. Defendant**

12 H&T employs ten or more persons and is a person in the course of doing business for  
13 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and  
14 Safety Code section 25249.6 et seq. (“Proposition 65”).

15 **1.4. General Allegations**

16 PHSA alleges that H&T has manufactured, sold, and/or distributed for sale in California,  
17 certain products described more specifically below containing lead and cadmium, chemicals listed  
18 by the State of California under Proposition 65, without providing a required Proposition 65  
19 warning. Lead and Cadmium shall be referred to hereinafter as the “Listed Chemicals.”

20 **1.5. Product Description**

21 The H&T products that are the subject of this Consent Judgment are: (1) Double Blue  
22 Whole Round Squid, UPC # 858838005960; (2) Double Blue Loligo Squid, UPC  
23 #8106988541590; (3) Double Blue Short-Necked Clam Meat, UPC #810698541842; (4) Double  
24 Blue Shellfish Cooked Clam, UPC #810698546700; (5) Double Blue Frozen Cooked Mussel  
25 Meat, UPC 810698546564; (6) Double Blue Loligo Squid Tentacles, UPC #810698561093; (7)  
26 Pineapple Frozen Cooked Apple Snail Meat, UPC#610698540821; (8) Pineapple Periwinkle  
27 Meat, UPC #810698542504; (9) Frozen Cooked Baby Clam Meat, UPC #810698547660; (10)  
28 Pineapple Frozen Whole Clam Steamed, UPC #810698548250; (11) Pineapple Frozen Whole

1 Cleaned Cuttlefish, UPC #810696361017; and (12) Pineapple Frozen Tiny Shrimp, UPC  
2 #810698561284, which were sold and/or distributed for sale in California by H&T (“Covered  
3 Products”).

4 **1.6. Notice of Violation**

5 On June 22, 2020, PHSA served H&T and the requisite public enforcement agencies with  
6 twelve 60-Day Notices of Violation (“Notices”) alleging that H&T violated Proposition 65. The  
7 Notices alleged that H&T failed to warn its customers and consumers in California that the  
8 Covered Products contain lead and cadmium.

9 **1.7. Complaint**

10 On June 9, 2021, Plaintiff, who was and is acting in the interest of the general public in  
11 California, filed a complaint (“Complaint” or “Action”) in the Superior Court in and for the  
12 County of Los Angeles against H&T and Does 1 through 50, alleging violations of Health &  
13 Safety Code §25249.6 based on the alleged exposures to lead and cadmium contained in the  
14 Covered Products.

15 **1.8. No Admission**

16 The Parties enter into this Consent Judgment as a full and final settlement of all claims that  
17 were raised or that could have been raised in the Notices, arising out of the facts and/or conduct  
18 alleged therein. H&T denies the material, factual and legal allegations contained in PHSA’s  
19 Notice and the Complaint, and maintains that all products, including but not limited to the  
20 Covered Products, that it has sold and distributed in California have been and are in compliance  
21 with all applicable laws, and are completely safe for their intended use. Nothing in this Consent  
22 Judgment shall be construed as an admission by H&T of any fact, finding, conclusion, issue of  
23 law, or violation of law, nor shall compliance with this Consent Judgment constitute or be  
24 construed as an admission by H&T of any fact, finding, conclusion, issue of law, or violation of  
25 law, such being specifically denied by H&T. However, this section shall not diminish or  
26 otherwise affect H&T’s obligations, responsibilities, and duties hereunder.

27 **1.9. Consent to Jurisdiction**

28

1 For purposes of this Consent Judgment only, the Parties stipulate that: (1) this Court has  
2 jurisdiction over H&T as to the allegations contained in the Complaint; 2) that venue is proper in  
3 the County of Los Angeles; and 3) that this Court has jurisdiction to enter and enforce the  
4 provisions of this Consent Judgment.

5 **1.10. Effective Date**

6 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date on  
7 which the Court approves this Consent Judgment, including any unopposed tentative ruling  
8 granting approval of this Consent Judgment.

9 **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS AND WARNINGS**

10 **2.1. Reformulation Standard and Schedule**

11 Commencing after the Effective Date, H&T shall not manufacture for consumer sale into  
12 the State of California any Covered Product that subsequently exposes a person to a Daily Serving  
13 of more than 0.5 micrograms of lead or 4.1 micrograms of cadmium without providing a warning  
14 as set forth in Sections 2.3 -2.6. A reformulated Covered Product (“Reformulated Product”) is one  
15 for which the Daily Serving contains no more than 0.5 micrograms of lead or 4.1 micrograms of  
16 cadmium (“Reformulation Standard”).

17 Covered Products that comply with the Reformulation Standard shall not require any  
18 warnings. For any Covered Products manufactured after the Effective Date or later that do not  
19 meet the Reformulation Standard, H&T shall provide the warning set forth in Section 2.3-2.6.

20 As long as H&T complies and remains in compliance with the requirements of Section 2.1  
21 – 2.6 for each of the Covered Products, the Parties agree that such Products shall be deemed to  
22 comply with Proposition 65 with respect to lead and cadmium, and that compliance with this  
23 Consent Judgment shall fully and completely satisfy H&T’s obligations under Proposition 65 to  
24 provide warnings for such Covered Products with respect to the presence of lead or cadmium,  
25 regardless of when manufactured, distributed or sold. To the extent that H&T manufactures other  
26 similar products in the future, aside from the Covered Products, its compliance with the  
27 obligations set forth herein, Sections 2.1-2.6, shall be deemed to comply with Proposition 65 with  
28 respect to lead and cadmium.

1 Covered Products manufactured as of the Effective Date and/or currently in the channels of  
2 distribution may continue to be sold through by H&T and Releasees. However, as of the Effective  
3 Date, H&T and the Releasees, as defined in Section 5.1, may not sell into California newly  
4 manufactured Covered Products that are not Reformulated Products that do not contain the  
5 warnings set forth in Paragraph 2.3-2.6.

6 **2.2. Daily Serving**

7 A Daily Serving (for purposes of determining Proposition 65 compliance for chemicals  
8 present in the Covered Products) shall be defined as the serving size set forth on the “Nutritional  
9 Facts” or “Supplemental Facts”.

10 **2.3. Warning Option**

11 Covered Products that do not meet the standard of Reformulated Products set forth in  
12 Section 2.1 above shall be accompanied by a warning as described in Section 2.4-2.6 below. This  
13 warning shall only be required as to Covered Products that Defendant manufactures, sells or ships  
14 to consumers, retailers, or distributors in California after the Effective Date. No Proposition 65  
15 warning for lead and/or cadmium shall be required as to any Covered Products that are already in  
16 the stream of commerce as of the Effective Date.

17 **2.4. Warning Language**

18 Covered Products manufactured after the Effective Date for sale in California that do not  
19 qualify as Reformulated Products shall contain a Proposition 65 warning affixed to the packaging,  
20 labeling, or directly on each Covered Product. The warning shall state either:

21 **[California Proposition 65] WARNING:** Consuming this product can  
22 expose you to chemicals including lead and cadmium, which are  
23 known to the State of California to cause cancer, and birth defects and  
24 other reproductive harm. [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

24 **[California Proposition 65] WARNING:** Cancer and Reproductive  
25 Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

26 The warning shall be prominently displayed with such conspicuousness as compared with  
27 other words, statements, designs, or devices as to render it likely to be read and understood by an  
28 ordinary individual under customary conditions before purchase or use. Each warning shall be

1 provided in a manner such that the consumer or user is reasonably likely to understand the  
2 Covered Products the warning applies to, so as to minimize the risk of consumer confusion. In the  
3 event that the Office of Environmental Health Hazard Assessment promulgates one or more  
4 regulations requiring or permitting warning text and/or methods of transmission applicable to the  
5 Covered Products that is different than those set forth above, H&T shall be entitled to use, at its  
6 discretion, such other warning text and/or methods of transmission without being deemed in  
7 breach of this Consent Judgment, as long as such warning text and methods of transmission  
8 comply with OEHHA regulations.

9 **2.5. Internet Sales**

10 For any Covered Products sold by H&T through the internet, the relevant warnings shall  
11 comply with the requirements of 27 Cal. Code Regs. § 25602(b), effective August 30, 2018.

12 **2.6. Warnings By Notice To Businesses Who Sell Or Receive The Covered**  
13 **Products**

14 For purposes of this Consent Judgment, H&T may also satisfy the warning requirement by  
15 providing the required information in compliance with 27 Cal. Code Regs. §25600.2 to any  
16 business or retailer that is subject to Proposition 65, to which it sells or transfers the Covered  
17 Products.

18 **3. MONETARY PAYMENTS**

19 **3.1. Payments Pursuant to Health & Safety Code § 25249.7(b)**

20 H&T shall pay a total civil penalty of \$4,000, to be apportioned in accordance with  
21 California Health & Safety Code §§25249.12(c) & (d), with 75% of these funds remitted to the  
22 State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the  
23 remaining 25% of the penalty remitted to PHSA. H&T shall issue two separate checks for the  
24 penalty payment: (a) one check made payable to the Kawahito Law Group in Trust for the State  
25 of California's Office of Environmental Health Hazard Assessment ("in Trust for OEHHA") in the  
26 amount of \$3,000, representing 75% of the total civil penalty; and (b) one check to "Kawahito  
27 Law Group in Trust for PHSA" in the amount of \$1,000, representing 25% of the total civil  
28 penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be

1 issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486). The second  
2 1099 shall be issued to Kawahito Law Group APC, who shall furnish a W2 at least five calendar  
3 days before payment is due.

4 The payments shall be delivered to PHSA's counsel at the following address within ten  
5 days of the Effective Date of this Consent Judgment:

6 James Kawahito, Esq.  
7 Kawahito Law Group APC  
8 300 Corporate Pointe., Suite 340  
9 Culver City, CA 90230

10 Payment may also be made by wire or ACH or wire transfer. Instructions will be provided  
11 separately upon request.

#### 12 **4. REIMBURSEMENT OF ATTORNEYS' FEES AND COSTS**

13 The Parties acknowledge that PHSA and its counsel offered to resolve this dispute without  
14 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving any fee  
15 reimbursement issue to be resolved after the material terms of the Consent Judgment had been  
16 settled. The Parties reached an accord on the compensation due to PHSA and its counsel under  
17 general contract principles and the private attorney general doctrine codified at California Code of  
18 Civil Procedure (CCP) § 1021.5, for all work performed through the mutual execution of this  
19 Consent Judgment. H&T shall reimburse PHSA and its counsel in the total amount of \$36,000 for  
20 all attorney's fees, investigative and consulting costs, and all other expenses of any kind incurred  
21 by PHSA as a result of investigating, bringing this matter to the attention of H&T, litigating this  
22 matter, negotiating this Consent Judgment, drafting the Complaint, and preparing the necessary  
23 briefing to obtain Court approval of the Consent Judgment. H&T shall make payment by check or  
24 by ACH or wire transfer within ten days of the Effective Date. The check shall be made payable  
25 to "Kawahito Law Group APC" and delivered to the address below. Wire or ACH Instructions  
26 will be provided separately upon request.

27 James Kawahito, Esq.  
28 Kawahito Law Group APC

1 300 Corporate Pointe., Suite 340  
2 Culver City, CA 90230

3 To allow for the issuance of a timely payment pursuant to the above, PHSA shall provide  
4 H&T with a completed IRS Form W-9 for the Kawahito Law Group APC upon request.

5 **5. RELEASE OF CLAIMS**

6 **5.1. Release of H&T**

7 This Consent Judgment is a full, final and binding resolution between PHSA, on behalf of  
8 itself and the public interest, and its past and current agents, representatives, attorneys, successors  
9 and/or assignees (the "Releasers"), on the one hand, and H&T, its respective parents, subsidiaries,  
10 affiliated entities that are under common ownership, shareholders, members, directors, officers,  
11 managers employees, representatives, agents, attorneys, divisions, subdivisions, partners, sister  
12 companies, licensors, licensees, and each entity to whom H&T directly or indirectly distributes or  
13 sells the Covered Products, including but not limited to downstream retailers, distributors,  
14 wholesalers, customers, marketplace hosts, franchisers, cooperative members, licensors, licensees,  
15 and the successors and assigns of any of them ("Releasees"), on the other hand, of any violation of  
16 Proposition 65 that was or could have been asserted by PHSA against H&T or the Releasees based  
17 on the alleged failure to warn about alleged Proposition 65 exposures to lead and/or cadmium  
18 caused by the Covered Products that were manufactured by H&T (either directly or through any of  
19 the Releasees) as of 90 days after the Effective Date. Compliance with the terms of this Consent  
20 Judgment constitutes compliance with Proposition 65 by Defendant with respect to the alleged or  
21 actual failure to warn about exposures to lead and cadmium from Covered Products.

22 With respect to the foregoing waivers and releases in this paragraph, PHSA on behalf of itself,  
23 hereby specifically waives any and all rights and benefits which he now has, or in the future may  
24 have, conferred by virtue of the provisions of Section 1542 of the California Civil Code, which  
25 provides as follows:

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



1           **5.2 H&T Release of PHSA**

2           H&T on behalf of itself, its past and current agents, representatives, attorneys, successors,  
3 and/or assignees, hereby waives any and all claims against PHSA, its attorneys and other  
4 representatives, for any and all actions taken or statements made (or those that could have been  
5 taken or made) by PHSA and its attorneys and other representatives, whether in the course of  
6 investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with  
7 respect to the Covered Products.

8           **6. COURT APPROVAL**

9           This Consent Judgment is not effective until it is approved and entered by the Court and  
10 shall be null and void if, for any reason, it is not approved and entered by the Court.

11          **7. SEVERABILITY**

12          If, subsequent to the execution of this Consent Judgment, any provision of this Consent  
13 Judgment is deemed by a court to be unenforceable, the validity of the remaining provisions shall  
14 not be adversely affected.

15          **8. GOVERNING LAW**

16          The terms of this Consent Judgment shall be governed by the laws of the State of  
17 California and apply within the State of California. In the event that Proposition 65 is repealed,  
18 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products,  
19 then H&T may provide Plaintiff with written notice of any asserted change in the law, and shall  
20 have no further obligations pursuant to this Consent Judgment, with respect to, and to the extent  
21 that, the Covered Products are so affected.

22          **9. JOINT PREPARATION**

23          The Parties have jointly participated in the preparation of this Consent Judgment and this  
24 Consent Judgment is the result of the joint efforts of the Parties. Accordingly, any uncertainty or  
25 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result  
26 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment  
27 agrees that any statute or rule of construction providing that ambiguities are to be resolved against  
28

1 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in  
2 this regard, the Parties hereby waive California Civil Code § 1654.

3 **10. ENTIRE AGREEMENT**

4 This Consent Judgment contains the sole and entire agreement and understanding of the Parties  
5 with respect to the entire subject matter hereof, and any and all prior discussions, negotiations,  
6 commitments, or understandings related thereto, if any, are hereby merged herein. No  
7 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding  
8 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of  
9 this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions  
10 hereof whether or not similar, nor shall such waiver constitute a continuing waiver unless set forth  
11 in writing between the Parties.

12 **11. NOTICES**

13 Unless specified herein, all correspondence and notice required to be provided pursuant to  
14 this Consent Judgment shall be in writing and, with courtesy copies to counsel delivered by email,  
15 sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested;  
16 or (c) a recognized overnight courier on any Party by the other at the following addresses:

17  
18 For H&T: Kirk Downing, Esq.  
19 9454 Wilshire Blvd., Ste 600  
20 Beverly Hills, CA 90212

21 For PHSA: Shabnam Elyaszadeh  
22 Public Health And Safety Advocates, LLC  
23 10429 Eastborne St.  
24 Los Angeles, CA 90049

25 With a Copy to: James K. Kawahito  
26 Kawahito Law Group APC  
27 Attn. PHSA v. H&T  
28 300 Corporate Pointe, Suite 340  
Culver City, CA 90230  
jkawahito@kawahitolaw.com

Any Party may, from time to time, specify in writing to the other a change of address to  
which all notices and other communications shall be sent.

1 **12. COUNTERPARTS; FACSIMILE SIGNATURES**

2 This Consent Judgment may be executed in counterparts and by facsimile or portable  
3 document format (PDF) signature, each of which shall be deemed an original, and all of which,  
4 when taken together, shall constitute one and the same document.

5 **13. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7**

6 PHSA and his attorneys agree to comply with the reporting form requirements referenced  
7 in California Health and Safety Code Section 25249.7(f).

8 **14. ADDITIONAL POST EXECUTION ACTIVITIES**

9 The Parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed  
10 motion is required to obtain judicial approval of this Consent Judgment. In furtherance of  
11 obtaining such approval, PHSA shall be responsible for preparing the motion to approve the  
12 Consent Judgment. H&T and their respective counsel agree to mutually employ their best efforts  
13 to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent  
14 Judgment by the Court in a timely manner. For purposes of this paragraph, best efforts shall  
15 include at a minimum, cooperating in Plaintiff's drafting and filing of any papers in support of the  
16 required motion for judicial approval.

17 **15. MODIFICATION**

18 This Consent Judgment may be modified only: (1) by written agreement of the parties and  
19 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion  
20 of any party and entry of a modified consent judgment by the Court. The Attorney General shall  
21 be served with notice of any proposed modification to this Consent Judgment at least forty-five  
22 days in advance of its consideration by the Court. To the extent either party alleges a breach of  
23 this Consent Judgment, written notice shall be provided to the party in alleged breach and the  
24 Parties shall thereafter meet and confer for at least 30 days to try to informally resolve the dispute  
25 before either Party files a motion to enforce.

26 **16. AUTHORIZATION**

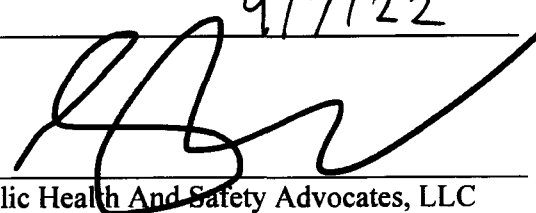
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

The undersigned are authorized to stipulate to, enter into, and execute this Consent Judgment on behalf of their respective parties, and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

**AGREED TO:**

**AGREED TO:**

Date: 9/7/22  
By:   
Public Health And Safety Advocates, LLC

Date: \_\_\_\_\_  
By: \_\_\_\_\_  
H&T Seafood, Inc.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health & Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered.

Dated: \_\_\_\_\_

\_\_\_\_\_

JUDGE OF THE SUPERIOR COURT

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

The undersigned are authorized to stipulate to, enter into, and execute this Consent Judgment on behalf of their respective parties, and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

**AGREED TO:**

**AGREED TO:**

Date: \_\_\_\_\_

Date: 9/7/22

By: \_\_\_\_\_  
Public Health And Safety Advocates, LLC

By:  \_\_\_\_\_  
H&T Seafood, Inc.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health & Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered.

Dated: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT