SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 534

24STCV08902
THE CHEMICAL TOXIN WORKING GROUP, INC., A CALIFORNIA NON-PROFIT CORPORATION vs THE PICTSWEET CO., A TENNESSEE-BASED COMPANY, et al.

July 30, 2026
8:30 AM

Judge: Honorable Lawrence P. Riff
Judicial Assistant: H. Kim
Courtroom Assistant: R. M. Cruz

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Non-Appearance Case Review re: Receipt of Objections to Proposed Statement of Decision

The Court is in receipt of Defendant's Objections to [Proposed] Statement of Decision, filed on 07/23/2026, and Plaintiff's Objection to Proposed Statement of Decision, filed on 07/27/2026.

The Court files its Statement of Decision this date.

Counsel for Defendant is ordered to file and serve a proposed judgment.

Non-Appearance Case Review re: Status of Submitted Judgment is scheduled for 08/13/2026 at 08:30 AM in Department 534 at Stanley Mosk Courthouse.

Clerk gives notice.

Certificate of Mailing is attached.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

THE CHEMICAL TOXIN WORKING GROUP INC., a California non-profit corporation, doing business as HEALTHY LIVING FOUNDATION INC. Plaintiff, vs. THE PICTSWEET CO., a Tennessee-based company, INSTACART, a Delaware corporation, FOOD 4 LESS HOLDINGS, INC., a California company, and DOES 1-10, Defendants	Case No. . 24STCV08902 Hon. Lawrence P. Riff Dept. 1 **STATEMENT OF DECISION** Safe Harbor Trial Dates: February 23, 26, 27; March 10, 12, 13; April 28, 2026

WHAT IS THIS CASE ABOUT?

This is a Proposition 65 "private enforcement action." This case asks the question whether the defendants who are in the business of selling frozen spinach to the public were required to provide a warning under Proposition 65 on account of the presence of the reproductive toxin cadmium in the spinach.

The parties agree[1] on many key issues: yes, the product contains cadmium, taken up into the plant from sources in the soil; yes, the amount (concentration) of cadmium in the spinach is measured, known and not a subject of dispute; yes, the State of California through its office of toxicology experts have established a "safe harbor" exposure level, called a "MADL" (maximum allowable dose level), and that MADL 4.1 micrograms/day. They agree that if the "Level of Exposure" ("LOE") is less than the MADL, then the defendants were not required to provide the warning.

So, what is the dispute? It is about the LOE. But it is narrower even than that. The LOE is a product of two numbers: the LQ—which is the "level in question," or concentration of the chemical in the medium (a parameter on which the parties agree) and the RARE, or Reasonably Anticipated Rate of Exposure. LOE = LQ × RARE. This lawsuit is about the RARE.

The governing regulation provides:

> The reasonably anticipated rate of exposure shall be based on the pattern and duration of exposure that is relevant to the reproductive effect **which provided the basis** for the determination that a chemical is known to the state to cause reproductive toxicity. (For example, an exposure of short duration is appropriate for a teratogenic chemical, whereas a chronic or protracted exposure is appropriate for one that retards fetal growth.) (27 CCR §25821(b).) (Emphasis supplied.)

The parties agree that the "pattern and duration" factor requires an answer to the question whether to average consumption over a long or short period of time: "chronic or protracted exposure", or "short duration". (See, e.g., Feb. 27, 2026 R.T. 37:5–9.) But the parties dispute how to determine "the pattern and duration of exposure that is relevant to the reproductive effect which provided the basis" for a chemical getting listed as a reproductive toxicant. Defendants contend that the relevant pattern and duration must be

[1] In objections to the PSOD, the parties express concern that the PSOD, and now the SOD, overstate the degree of the parties' agreement as stated. The Court declines to parse the language more finely and will allow the objections to stand and speak for themselves should they ever become relevant. Otherwise the Court has considered the parties' objections to the PSOD and they are overruled.

ascertained, if possible, from the administrative record that led to the chemical's listing by the State 30 years ago; plaintiff contends that the relevant pattern and duration are to be determined by contemporary science, as may be proven at trial to the Superior Court.

Let's unpack that further. The State of California made its cadmium listing decision in 1996, 30 years ago. There is an administrative record as to why and how it so listed cadmium as a reproductive toxin. According to defendants (and their well-qualified expert), the basis for that listing did not include the proposition that cadmium is a teratogen, a substance capable of inducing permanent structural abnormalities from birth. There were other reproductive toxic effects on which the listing was based such reduced sperm count in non-human mammals. According to plaintiff, in the years since, robust scientific evidence emerged that shows, yes, cadmium is a teratogen. Whether cadmium is or is not a teratogen affects the duration factor of the RARE: whether that duration to be a averaged should be short (teratogen) or protracted (not a teratogen).

Here's the bottom line: if the law requires or permits the court to evaluate plaintiff's post-listing scientific evidence and if the court concludes that, yes, cadmium is a teratogen, then, yes, the shorter duration factor leads the arithmetic to show that the LOE is greater than the MADL, and, yes, defendants needed to include a Proposition 65 warning. But if the court is not required or permitted to evaluate the post-listing science and accordingly can only consider "the reproductive effect that provided the basis [for the State's listing]," which did not include teratogenic effects, then the longer, protracted duration factor is appropriate and the arithmetic shows that the LOE is less than the MADL. In that case, defendants needed not provide the Proposition 65 warning.

The centrality of this legal issue cannot be overstated. During trial, the court posed this hypothetical:

> THE COURT: OKAY. LET ME GET MY QUESTION OUT
>
> NOW WITH THAT AS BACKGROUND.
>
> IF HYPOTHETICALLY IN THE YEAR 2020 THERE WERE

FIVE BLUE RIBBON HUMAN EPI STUDIES PUBLISHED IN THE LANCET AND SCIENCE AND THE BRITISH AND BMJ AND THE MOST PRESTIGIOUS HARD-HITTING PEER-REVIEWED JOURNALS IN THE WORLD, EVERY ONE OF THEM SHOWING BY HIGH STATISTICAL SIGNIFICANCE THAT CADMIUM IS A HUMAN TERATOGEN, IF THAT WERE TRUE, IT WOULD MAKE NO DIFFERENCE TO WHAT WE'RE DOING HERE TODAY UNDER YOUR VIEW, RIGHT?

MR. BOONE [defense counsel]: THAT'S CORRECT BECAUSE THE ANALYSIS OF THOSE FIVE STUDIES WEIGHED AGAINST THE REST OF THE EVIDENCE REGARDING CADMIUM IS SOMETHING THAT OEHHA AND THE DARTIC COMMITTEE DO [i.e., the State's toxicology experts]. NOT YOUR HONOR.

THE COURT: WELL, I -- AND I DON'T THINK -- I UNDERSTAND WHAT YOU JUST SAID, BUT I THINK YOUR ARGUMENT IS -- WELL, MAYBE YOU JUST SAID IT -- THAT WHAT I AM DOING IS LOOKING TO SEE WHAT OEHHA DID IN 1996, NOT WHAT THEY COULD HAVE DONE IN 2024 HAD THEY CHOSEN TO.

MR. BOONE: YES. (RT, Mar. 13, 115:27-116:19)

The court agrees with the defense. It is the province of the State of California with its team of toxicology experts to update the cadmium listing to include teratological findings if they exist. For reasons not explored at trial, the State has not done so. The court concludes based on the structure of the relevant statutes and regulations, and the plain meaning of their words, it is not the province of the Superior Court to do so in a private enforcement action.

The court concludes that the defense's RARE (non-teratogenic-based) averaging time is appropriate and well-founded. Accordingly, the LOE is less than the MADL and the

defense was not obligated to provide the Proposition 65 warning. The defense carried their safe harbor affirmative defense.

If plaintiff is correct and the science beneath the cadmium listing is stale, plaintiff's remedy is in the realm of administrative law, not a Proposition 65 enforcement action. "Any interested person may request the lead agency to issue an interpretive guideline concerning any subject related to the Act." (See 27 CCR §25203(a).) The court's ruling does not prevent CTWG from asking OEHHA to update its work in view of more recent science. But CTWG would have the court step into OEHHA's shoes to divine for itself new and different toxicological reproductive effects beyond those that "provided the basis" to list cadmium. (See 27 CCR §25821(b).) That would be error. All of this is explained in further detail below.

The judgment is for the defense.

MORE BACKGROUND

On February 23 and 26–27, March 10 and 12–13, and April 28, 2026, this matter came on for non-jury trial of the "safe harbor" defense asserted by defendants, The Pictsweet Company, Maplebear, Inc. dba Instacart and Food4Less Holdings, Inc. Plaintiff The Chemical Toxin Working Group Inc. d/b/a Healthy Living Foundation Inc. ("CTWG") was represented by Aida Poulsen and Peter T. Sato of Poulsen Law P.C. and Jake W. Schulte of Entorno Law, LLP. Defendant The Pictsweet Company was represented by Robert E. Boone III, L. Rex Sears, and Quincy J. Chuck of Maschoff Brennan Gilmore Israelsen & Mauriel LLP and Merrit Jones of Bryan Cave Leighton Paisner LLP. Defendants Maplebear, Inc. dba Instacart and Food4Less Holdings, Inc. were represented by Lauren M. Michals of Nixon Peabody LLP.

Pictsweet took the lead in presenting the safe harbor defense for all defendants. Pictsweet closed its case in chief on March 13, 2026. The court then announced on the record an evidentiary ruling which was captured in the minute order entered later that day. The court ruled that CTWG would not be allowed to present evidence purporting to show

the relevant pattern and duration based on post-listing science. CTWG stated on the record that the court's ruling barred all the evidence it had intended to present in its case in chief, whereupon the court announced its intent to enter judgment for Pictsweet. The court, however, allowed further briefing and, on April 28, 2026, heard further oral argument on its evidentiary ruling. At the conclusion of the April 28 hearing, the court stated on the record that it would not modify its evidentiary ruling. CTWG did not retract its representation that the court's ruling excluded all its evidence; instead, CTWG requested a statement of decision under Code of Civil Procedure, section 632, subdivision (a) and California Rules of Court, rule 3.1590, subdivision (d).

ANALYSIS

I. STATUTORY AND REGULATORY FRAMEWORK

A. Proposition 65 overview

"The Safe Drinking Water and Toxic Enforcement Act of 1986," popularly known as "Proposition 65" or "Prop 65," is codified at Health & Safety Code, sections 25249.5 et seq. It was adopted by the people of the State of California as an initiative on November 4, 1986. It is generally administered by the Office of Environmental Health Hazard Assessment, or OEHHA.

Relevant here, Prop 65 requires the executive branch to publish at least annually "a list of those chemicals known to the state to cause cancer or reproductive toxicity." (HSC §25249.8(a).[2]) The current list is maintained as 27 CCR §27001(b), (c).[3] The chemical cadmium is listed as both a carcinogen and a reproductive toxicant. This case only involves the reproductive toxicity listing for cadmium.

There are several mechanisms by which chemicals get listed under Prop 65. Cadmium was listed by this process: "in the opinion of the state's qualified experts it has

[2] I.e., Health & Safety Code, sec. 25249.8, subd. (a). Hereafter, Prop 65 provisions will be cited using the same convention, without further definition.

[3] I.e., Cal. Code Regs. ("CCR"), tit. 27, sec. 27001, subds. (b) and (c). Hereafter, CCR provisions will be cited using the same convention, without further definition.

been clearly shown through scientifically valid testing according to generally accepted principles to cause cancer or reproductive toxicity." (HSC §25249.8(b).) For reproductive toxicity, the state's qualified experts are the Developmental and Reproductive Toxicant Identification Committee, or more briefly DART Identification Committee or DARTIC, which is part of OEHHA's Science Advisory Board. (See 27 CCR §§25102(c)(2), 25302(a).) DARTIC voted to list cadmium as a reproductive toxicant at its December 1996 meeting.[4]

Prop 65 requires every "person in the course of doing business" who "knowingly and intentionally expose[s] any individual to a chemical known to the state to cause cancer or reproductive toxicity" to "first giv[e] clear and reasonable warning to such individual ..." (HSC §25249.6.) However, the act makes certain exceptions to the warning requirement. Relevant here, no warning is required if "the person responsible" for an exposure shows "that the exposure will have no observable effect assuming exposure at one thousand (1000) times the level in question for substances known to the state to cause reproductive toxicity ..." (HSC §25249.10(c).) This is the "safe harbor" defense. OEHHA has promulgated regulations governing the safe harbor defense as 27 CCR §§25801, 25803, 25805, and 25821, which together comprise CCR title 27, division 4, chapter 1, article 8. These regulations were adopted following notice and comment proceedings reported in a Final Statement of Reasons ("FSOR") dated June 1989 (available online,[5] introduced at trial as Exhibit 04T).

For enforcement, Prop 65 relies first on public law enforcement officials. (See HSC §25249.7(c) ["Actions ... may be brought by the Attorney General ..., by a district attorney, by a city attorney of a city having a population in excess of 750,000, or, with the consent of the district attorney, by a city prosecutor in a city or city and county having a full-time city

[4] See *Office of Environmental Health Hazard Assessment* <https://oehha.ca.gov/proposition-65/chemicals/cadmium>

[5] *Office of Environmental Health Hazard Assessment* <https://oehha.ca.gov/sites/default/files/media/downloads/crnr/art78fsrjune1989.pdf>

prosecutor ..."].) However, if no public official pursues a claim, an enforcement action "may be brought by a [private] person in the public interest." (HSC §25249.7(d).)

B. The safe harbor exemption

This is a complex area of regulation. The statutory requirement for the safe harbor defense is "that the exposure ... [has] no observable effect assuming exposure at one thousand (1000) times the level in question." (HSC §25249.10(c).) This is a margin of safety concept frequently used in regulatory toxicology. Here, it is a thousand-fold margin of safety. The safe-harbor regulations "provide ... methodologies" to "assist persons in making certain that their ... exposures ... would have no observable effect within the meaning of the Act." (FSOR, p. 4.)

For this case, the key concept is that the regulations provide for OEHHA to predetermine MADLs "to provide a 'safe harbor' for those who might have difficulty identifying such levels if left to their own devices." (FSOR, p. 77.) A person who is responsible for an exposure to a chemical that is listed as a reproductive toxicant under Prop 65, for which OEHHA has predetermined a MADL, may rely on the predetermined MADL as a conclusive determination that exposure at 1,000 times the predetermined MADL has no observable effect. (27 CCR §§25801(b)(2), §25805(a).) The MADLs that have been predetermined by OEHHA are collected in 27 CCR §25805(b). Cadmium is one of the Prop 65 chemicals that has a predetermined regulatory MADL. It is 4.1 micrograms/day. Bearing that in mind, the court will provide this further background on the safe harbor defense.

To begin, the regulations define the statutory term, "level in question," as "the chemical concentration of a listed chemical for the exposure in question." (27 CCR §25821(a).) But that is just a starting point. "The exemption test of section 25249.l0(c) is based upon exposure. It is the 'exposure' which must produce no observable effect 'at the level in question.'" (FSOR, p. 83.) To get from the "level in question," or LQ, to the exposure that must produce no effect, the regulations introduce two new terms: "level of exposure," or LOE, and "reasonably anticipated rate of exposure," or RARE. Section 25821(b) defines

"'exposure' to mean … the 'reasonably anticipated rate of exposure for an individual to a given medium,'" i.e., RARE. (FSOR, p. 83.) Then this regulation defines "level of exposure," or LOE, by means of "a working formula" that combines RARE and LQ. (*Ibid.*) Specifically: "The level of exposure which must produce no observable effect assuming exposure at one thousand times the level in question is the product of the concentration of the chemical in the medium and the reasonably anticipated rate to exposure to individuals to that medium." (*Ibid.*; see also 27 CCR §25821(b) ["the level of exposure to a chemical listed as causing reproductive toxicity shall be determined by multiplying the level in question (stated in terms of a concentration of a chemical in a given medium) times the reasonably anticipated rate of exposure for an individual to a given medium"].) In short, Level of Exposure equals Level in Question times Reasonably Anticipated Rate of Exposure. Shorter still:

$$LOE = LQ \times RARE$$

Once Level of Exposure is determined, the next step is to determine whether it satisfies the safe harbor condition. To do this, the regulations introduce a "no observable effect level," or NOEL, which is "the maximum dose level at which a chemical has no observable reproductive effect." (FSOR, p. 68; see also 27 CCR §25801(c) ["'NOEL' shall mean that no observable effect level, which is the maximum level of exposure at which a chemical has no observable reproductive effect."].) Under the regulatory procedure, a NOEL is derived in accordance with §25803; then the NOEL is "divid[ed] … by one thousand (1,000) to arrive at the maximum allowable dose level," or MADL. (See 27 CCR §25803(b)(1).) The Level of Exposure then gets compared to the MADL. The safe harbor exemption applies if the Level of Exposure does not exceed the MADL—in other words, if this arithmetic inequality is true: $LOE \leq MADL$[6].

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[6] Given how the terms are defined, the statement $LOE \leq MADL$ is equivalent to:

$$LQ \times RARE \leq NOEL \div 1{,}000$$

Which is equivalent to:

$$(LQ \times 1{,}000) \times RARE \leq NOEL$$

It is up to the person who claims the benefit of the safe harbor exemption to prove the NOEL and corresponding MADL. (See HSC §25249.10(c).)

Thus, the regulations "provide some 'safe harbor' levels and methodologies, and criteria for exposure assessment, which will assist persons in making certain that their ... exposures ... would have no observable effect within the meaning of the Act." (FSOR, p. 4.) Specifically, under the regulatory procedure:

> a certain daily exposure to a chemical in a food product could be calculated by taking into account the concentration of the chemical in the food (in micrograms of chemical per gram of food) and multiplying that concentration times the quantity ingested (in grams of food per day). The product of this multiplication yields the quantity of chemical ingested in that food (in micrograms of chemical per day). This level must not exceed the level derived pursuant to this article.

(*Id.*, p. 83.)

II. PROCEDURAL SUMMARY

CTWG's claim is that Pictsweet Farms Simple Harvest® Frozen Chopped Spinach ("Product") should carry a Prop 65 warning due to its cadmium content. Pictsweet and the other defendants defend on several grounds, including the safe harbor exemption. By order dated March 4, 2025 (J. Killefer), the court bifurcated defendants' safe harbor defense for trial and stayed the rest of the case. The safe harbor defense was tried in February, March, and April 2026, as described above (before J. Riff).

At trial, Pictsweet presented two expert witnesses, Dr. Steven R. Boomhower and Dr. Carolyn G. Scrafford, and documentary evidence. The court qualified Dr. Boomhower as an expert on toxicological human health risk assessment with regard to metals and developmental toxicology with respect to metals and Dr. Scrafford as an expert on dietary exposure assessments and evaluating exposure to metals from food. (Feb. 23, 2026, R.T. 62:2–21,[7] 77:26–78:6 [Dr. Boomhower]; March 10, 2026, R.T. 145:16–18; March 12, 2026,

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Which more obviously reflects the statutory requirement that "the exposure will have no observable effect assuming exposure at one thousand (1000) times the level in question." (See HSC, §25249.10, subd. (c).)

[7] I.e., p. 62, lines 2–21. Transcripts have been lodged for each day of trial (February 23, 26, and 27; March 10, 12, and 13; April 28, 2026).

R.T. 21:22–27 [Dr. Scrafford].) Although CTWG had designated several expert witnesses for trial, when the time came to put on its case, it indicated that all the testimony they would have given had been excluded by an evidentiary ruling.

As further described above, the safe harbor defense comes down to a comparison of two numbers: Level of Exposure and MADL. If a defendant proves that Level of Exposure does not exceed MADL then the defense has been proven. Level of Exposure can be calculated as Level in Question multiplied by Reasonably Anticipated Rate of Exposure. Again, the only number seriously contested at trial was Reasonably Anticipated Rate of Exposure.

A. MADL (Maximum Allowable Dose Level)

The MADL, recall, can be established in different ways. One way is for the defendant to prove a NOEL, then divide it by 1,000. (27 CCR §25803(b)(1).) Another way is to rely on a MADL predetermined by OEHHA, as given in 27 CCR §25805(b). (27 CCR §§25801(b)(2), §25805(a).) At trial, for the MADL, Pictsweet relied on the predetermined regulatory value of 4.1 micrograms per day, or 4.1 μg/day. (See 27 CCR §25805(b).) The Court ruled in limine that "no evidence can be offered that the … MADL … is anything other than 4.1 micrograms / day," and CTWG agreed at trial that it does not contest the regulatory MADL. (Feb. 23, 2026 Minute Order; Feb. 27, 2026 R.T. 35:24–26.) So, this number was not disputed.

B. LOE (Level Of Exposure)

Level Of Exposure, recall, is a product of two numbers: LQ—which is the "level in question," or concentration of the chemical in the medium; and RARE, or Reasonably Anticipated Rate of Exposure. Thus: LOE = LQ × RARE.

1. LQ (Level in Question)

For Level in Question, at trial, Pictsweet relied on CTWG laboratory results. Specifically, CTWG produced in discovery the results of five laboratory tests of different samples of Pictsweet's Product. (Exhibits 7, 10–11, 32.) Dr. Scrafford testified that: (1) the appropriate way to determine cadmium concentration in the Product is to calculate the

arithmetic mean of the five test results; and (2) the arithmetic mean of the results is 0.331 micrograms of cadmium per gram of Product, or 0.331 μg/g. (March 12, 2026, R.T. 29:11–15, 85:17–28.) CTWG presented no contrary evidence.

2. RARE (Reasonably Anticipated Rate of Exposure)

That leaves Reasonably Anticipated Rate of Exposure. Of the various numbers that go into adjudicating the safe harbor exemption, this was the only one seriously contested at trial; and the dispute over this number is more about methodology than data.

To determine Reasonably Anticipated Rate of Exposure, Dr. Scrafford broke it down into two factors: amount consumed per "eating occasion," or EO, and EO per day. She then multiplied amount per EO, times EO per day, to arrive at Reasonably Anticipated Rate of Exposure. The regulations require Reasonably Anticipated Rate of Exposure to be "based on data for use of a general category or categories of consumer products, such as the United States Department of Agriculture Home Economic Research Report, Foods Commonly Eaten by Individuals: Amount Per Day and Per Eating Occasion, where such data are available." (27 CCR §25821(c)(2).) To determine amount per EO, Dr. Scrafford used the USDA's National Health and Nutrition Examination Survey, or NHANES, which she testified is the successor to the USDA report identified in the regulations. NHANES is a robust and reliable source of consumer use data, it is representative of the entire population, it is publicly available, and it is frequently used by state and federal regulators, including OEHHA. (March 12, 2026, R.T. 41:1–44:8.) To determine EO per day, Dr. Scrafford relied on the 14-day National Eating Trends survey, or NET, from Circana, Inc. (*Id.,* 72:12–73:14.)

Dr. Scrafford testified that: (1) the NHANES survey showed that the average user of frozen spinach consumes 17.8 grams of it, per EO; and (2) the NET survey shows that the average user of frozen spinach consumes it about once every nine days, which is equivalent to 0.11 EO per day. (March 12, 2026, R.T. 30:2–9; 70:5–13; 81:13–22; 83:10–13; 85:17–28.) Dr. Scrafford then multiplied these numbers to arrive at a Reasonably Anticipated Rate of Exposure of 2.0 grams per day. (*Id.,* 85:17–28.) Dr. Scrafford

explained that for both factors, she used numbers for frozen spinach generally, and not Pictsweet's Product specifically, because the applicable regulation requires Reasonably Anticipated Rate of Exposure to be "based on data for use of a general category or categories of consumer products." (27 CCR §25821(c)(2); see March 12, 2026, R.T. 92:18–93:20.) Similarly, she did not include numbers for forms of spinach other than frozen because NHANES has a general category for frozen spinach, and using numbers for all forms of spinach would not be scientifically or statistically correct, since both Pictsweet's Product and CTWG's lab reports concern *frozen* spinach. (*Id.,* 57:5–58:15.)

3. Level Of Exposure calculation

Finally, Dr. Scrafford multiplied Reasonably Anticipated Rate of Exposure of 2.0 g/day, times Level in Question of 0.331 μg/g, to arrive at a Level Of Exposure of 0.662 μg/day—which is well below the regulatory MADL of 4.1 μg/day. Equivalently, with Reasonably Anticipated Rate of Exposure broken out into its constituent factors:

LQ		RARE				LOE
		Amount per EO		*EO per day*		
0.331 μg/g	×	17.8 g/EO	×	0.11 EO/day	=	0.662 μg/day
(micrograms of cadmium per gram of Product)		(grams of frozen spinach consumed per eating occasion)		(daily equivalent of one EO every 9 days)		(cadmium exposure from Product)

Because 0.662 μg/day does not exceed the regulatory MADL of 4.1 μg/day, Pictsweet's Product falls under the safe harbor exemption to Prop 65's warning requirement. (March 12, 2026 R.T. 94:3–12.)

On cross-examination of Dr. Scrafford, CTWG inquired about food categories that she selected from NHANES, and sought to impeach the NET data source. CTWG also questioned the witness's methodology with the assertion that Reasonably Anticipated Rate of Exposure should be decided *without* taking into account frequency of consumption, *without* averaging consumption over time—which is to say: Dr. Scrafford should not have

included the EO/day factor. Thus, although CTWG did not walk through the arithmetic, the Court understands its contention to be that Level of Exposure should be determined as follows:

LQ		RARE		LOE
		Amount per EO		
0.331 μg/g	×	17.8 g/EO	=	5.89 μg/day
(micrograms of cadmium per gram of Product)		(grams of frozen spinach consumed per eating occasion)		(cadmium exposure from Product)

By *that* calculation, Level of Exposure exceeds the regulatory MADL, and Pictsweet could not shelter under the safe harbor exemption without proving a higher MADL. (See 27 CCR §25801(b)(1).)

4. Pattern and duration

There is solid authority for taking frequency of consumption into account by averaging consumption over time, as Dr. Scrafford did. For example, the FSOR explains:

> The reasonably anticipated rate of exposure will vary from case to case. It may be reasonably anticipated that food will be ingested once each day, or once each week, and so on. … What rate of exposure is reasonably anticipated from a given medium, such as a certain type of food or a consumer product, will depend upon the medium, its anticipated use and other circumstances. …
>
> … [A] certain daily exposure to a chemical in a food product could be calculated by taking into account the concentration of the chemical in the food (in micrograms of chemical per gram of food), and multiplying that concentration times the quantity ingested (in grams of food per day). The product of this multiplication yields the quantity of chemical ingested in that food (in micrograms of chemical per day).

(FSOR, p. 83.) That is an apt summary of the method followed by Dr. Scrafford. Similarly, in *Environmental Law Foundation v. Beech-Nut Nutrition Corp.* (2015) 235 Cal.App.4th 307 ("*Beech-Nut*"), the defense expert:

used three types, or "buckets," of data to arrive at the average consumer's lead intake per day for each of the food products at issue: (1) the average lead levels in the food products, (2) the average amounts of the food products consumed per eating occasion, and (3) the average number of eating occasions on which the products are consumed. She then multiplied the three figures together to determine the average consumer's level of exposure to lead. Her results showed the exposure levels consistently fell below the safe harbor level ...

(*Beech-Nut*, 235 Cal.App.4th at p. 315.) Again, this is what Dr. Scrafford did.[8] In *Beech-Nut*, this led to judgment for the defendant, which was affirmed on appeal. Along the way, *Beech-Nut* considered and rejected the theory that a Prop 65 defendant is never "allowed to calculate average exposure to a reproductive toxicant and then compare it to the regulatory MADL"—even though the Attorney General advocated this in an amicus brief. (*Id.* at p. 329.)

CTWG does not dispute that averaging consumption over time may be done, in certain cases. But CTWG argues that cadmium exposure through ingestion should not be averaged. The governing regulation provides:

The reasonably anticipated rate of exposure shall be based on the pattern and duration of exposure that is relevant to the reproductive effect which provided the basis for the determination that a chemical is known to the state to cause reproductive toxicity. (For example, an exposure of short duration is appropriate for a teratogenic chemical, whereas a chronic or protracted exposure is appropriate for one that retards fetal growth.)

(27 CCR §25821(b).)

The parties agreed that "pattern and duration" encompasses whether to average consumption over time ("chronic or protracted exposure"), or not ("short duration"). (See, e.g., Feb. 27, 2026, R.T. 37:5–9.) But the parties dispute how to determine "the pattern and duration of exposure that is relevant to the reproductive effect which provided the basis" for a chemical getting listed as a reproductive toxicant. Pictsweet contends that the relevant pattern and duration must be ascertained, if possible, from the administrative

[8] The defense expert in *Beech-Nut* also used the same NHANES and NET data sources as Dr. Scrafford. (See *Beech-Nut*, 235 Cal.App.4th at pp. 315, 328.)

record that led to the chemical's listing; CTWG contends that the relevant pattern and duration are to be determined by contemporary science, as proven at trial. As an issue of regulatory construction, this is an issue of law—which the Court resolves in Pictsweet's favor, as discussed below.

At trial, Pictsweet's other expert, Dr. Boomhower, testified that the administrative record showed the relevant pattern and duration for cadmium is a chronic or protracted exposure. CTWG tried to impeach Dr. Boomhower and his opinions on cross-examination, but to no effect. CTWG did not present or proffer any evidence of relevant pattern and duration based on the administrative record.

C. Trial conclusion

After Drs. Boomhower and Scrafford testified, Pictsweet rested. The court then ruled that CTWG would not be allowed to present evidence purporting to show the relevant pattern and duration based on post-listing science. The court's ruling left CTWG with the option of presenting evidence about the relevant pattern and duration based on the administrative record—as well as evidence on other issues, such as Level in Question, amount consumed per EO, and EO per day. But CTWG indicated that all the evidence it had intended to present was barred by the court's evidentiary ruling. Based on that representation, the court indicated its intent to enter judgment for Pictsweet. As noted above, the court then allowed further briefing and oral argument on its evidentiary ruling, but did not change that ruling.

III. DISCUSSION

To establish that the safe harbor exemption applies, Pictsweet had to show that the level of exposure from its Product does not exceed the MADL. That is, it had to show that this arithmetic statement is true:

$$LOE \leq MADL$$

At trial, Pictsweet's proof of this was mostly uncontested. Recall that Level of Exposure is the product of Level in Question and Reasonably Anticipated Rate of

Exposure; that is:

LOE = LQ × RARE

CTWG focused on the Reasonably Anticipated Rate of Exposure factor and said little about the rest. Pictsweet expert Dr. Scrafford, recall, determined Reasonably Anticipated Rate of Exposure by multiplying amount per EO times EOs per day.

For its part, CTWG urged, through attorney argument, that cadmium has teratogenic effects; therefore, frequency of consumption, or EOs per day, should not have been taken into account. Dr. Scrafford based her decision to consider EOs per day on Dr. Boomhower's testimony that the administrative record shows that non-teratogenic effects, from protracted exposure, provided the basis for listing cadmium as a reproductive toxicant. CTWG stated its intention to introduce evidence of post-listing science to demonstrate teratogenicity. But the court ruled that CTWG would not be permitted to present "evidence … of science developed after the listing of cadmium in the 1996–1997 time frame that the element is … a teratogen." The minute order that day states, "[p]laintiff advised the Court that such an order will have the effect of excluding the four experts plaintiff intends to call to controvert the defense evidence on the bifurcated issue of defendant's safe harbor affirmative defense." (March 13, 2026, Minute Order, p. 2; see also March 13, 2026, R.T. 128:12–13 ["Your Honor, this excludes all our experts."]; April 1, 2026, Plaintiff's Phase I Trial Brief, p. 8, line 16 ["The temporal limitation would exclude all four of Plaintiff's experts …"].)

The court's evidentiary ruling is based on its interpretation of 27 CCR §25821(b). As the court construes this regulation, the relevant pattern and duration of exposure—including whether or not to average consumption over time, such as by including EOs per day—must, if possible, be determined by reference to the administrative record behind the listing of a reproductive toxicant such as cadmium. The court begins its analysis by explaining its regulatory construction. After that, the court will review the evidence by which Pictsweet proved its safe harbor defense.

A. The relevant pattern and duration should be ascertained from the administrative record, if possible.

"The interpretation of a regulation, like the interpretation of a statute, is, of course, a question of law." (*Carmona v. Division of Industrial Safety* (1975) 13 Cal.3d 303, 310.) When interpreting an administrative regulation, we follow the same rules of construction that apply to statutes. [Citation.] Thus, our fundamental objective is to ascertain and effectuate the intent of the agency issuing the regulation. [Citations.] [¶] In determining the issuing agency's intent, we look first to the language of the regulation itself.

(*Department of Industrial Relations v. Occupational Safety & Health Appeals Bd.* (2018) 26 Cal.App.5th 93, 100–01.)

Thus, the court begins with "the language of the regulation."

1. The regulatory text supports determining pattern and duration from the administrative record.

The regulatory text at issue is: "The reasonably anticipated rate of exposure shall be based on the pattern and duration of exposure that is relevant to the reproductive effect which provided the basis for the determination that a chemical is known to the state to cause reproductive toxicity." (27 CCR §25821(b).) This is followed by: "(For example, an exposure of short duration is appropriate for a teratogenic chemical, whereas a chronic or protracted exposure is appropriate for one that retards fetal growth.)" (*Ibid.*)

On the basic issue of whether pattern and duration should be determined by looking back to the administrative record or looking forward to post-listing science, the regulatory text is unambiguous. It requires pattern and duration to be determined with reference to "the reproductive effect which provid**ed** the basis" for listing. (27 CCR §25821(b) [emphasis added].) Information on what *provided* the basis for listing is to be found in the administrative record, not post-listing science. More specifically, DARTIC, in 1996, determined that cadmium is a reproductive toxicant.[9] The regulation directs that Reasonably Anticipated Rate of Exposure be based on the pattern and duration relevant

[9] See *Office of Environmental Health Hazard Assessment* <https://oehha.ca.gov/proposition-65/chemicals/cadmium>

to the effects, based on which DARTIC made its determination. The authoritative source of information on the effects that *provid**ed*** the basis for listing, and the pattern and duration of exposure relevant thereto, is the administrative record—not post-listing science.

2. The regulatory history supports reliance on the administrative record.

Even if there were an ambiguity in the regulatory language, other considerations would dictate that the regulation be construed to require that the relevant pattern and duration be determined from the administrative record. "[W]hen an examination of regulatory language in its proper context fails to resolve an ambiguity, courts may 'turn to the [regulatory] history of an enactment as an aid to its interpretation.'" (*Department of Industrial Relations v. Occupational Safety & Health Appeals Bd.*, *supra*, 26 Cal.App.5th 93, 101 [quoting, with alteration, *Katz v. Los Gatos-Saratoga Joint Union High School Dist.* (2004) 117 Cal.App.4th 47, 55].) In connection with a related safe harbor regulation, OEHHA provided this explicit statement of intent:

> [A] person needs only to consult the list to determine which effects provide the basis for the listing. [¶] If more specific information is desired and the chemical was listed based upon the recommendation of the SAP, the person may consult the transcript of the hearing of the SAP or data provided to the SAP by the Agency and other interested parties to determine the specific reproductive effect of concern. This information may be obtained from the Agency.

(FSOR, p. 74.) "SAP" means Scientific Advisory Panel, which for reproductive toxicants is DARTIC. (See FSOR, p. 81; 27 CCR §§25102(c)(2), 25302(a).) A chemical being "listed based upon the recommendation of the SAP" means it was listed through the first of the three statutory processes described above: "in the opinion of the state's qualified experts it has been clearly shown through scientifically valid testing according to generally accepted principles to cause cancer or reproductive toxicity." (HSC §25249.8(b); see *ante*, §0, p. 6.) This is how cadmium was listed.[10] The "data provided to the SAP by the Agency

[10] See *Office of Environmental Health Hazard Assessment* <https://oehha.ca.gov/proposition-65/chemicals/cadmium>

and other interested persons" and "the transcript of the hearing" are the core of the administrative record. OEHHA thus made clear that for safe harbor purposes, information about "the *specific* reproductive effect of concern," is properly sought in the administrative record.

There may be cases where averaging makes no difference. Level in Question might be so low that Level of Exposure falls below the MADL, even if Reasonably Anticipated Rate of Exposure is determined without taking into account frequency of consumption; or Level in Question might be so high that Level of Exposure exceeds the MADL, even if consumption is averaged over time. In those cases, "a person needs only to consult the list." But where averaging makes a difference to the outcome, "more specific information" about "the *specific* reproductive effect of concern" is needed, and this information is to be obtained from the administrative record.

Here, averaging makes a difference. And the regulatory history supports determining whether to average by consulting the administrative record.

3. Basing pattern and duration on the administrative record allows the safe harbor exemption to function as intended.

"We do not construe a regulation in isolation, but instead read it with reference to the scheme of law of which it is a part, so that the whole may be harmonized and retain effectiveness." (*De La Torre v. California Horse Racing Bd.* (2017) 7 Cal.App.5th 1058, 1066.) Holistic construction further reinforces that pattern and duration should be determined based on the administrative record.

The safe harbor is described by the regulations as an exemption, not a defense. This is because it is primarily intended to guide conduct: "persons in the course of doing business, in order to avoid violation of the Act, will need to determine the applicability of the [safe harbor] exemption *prior to* exposure ..." (FSOR, p. 82 [italics added].) Its role as an after-the-fact litigation defense is ancillary to that prelitigation normative function. The prelitigation, action-guiding character of the safe harbor is built into the statute itself. The warning requirement is stated in Section 25249.6 of the Act as follows: "No person in the

course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause ... reproductive toxicity without *first* giving clear and reasonable warning to such individual, except as provided in Section 25249.10 [italics added]." Section 25249.10, in turn, provides: "Section 25249.6 shall not apply to ...: ... (c) An exposure ... which the person responsible can show ... will have no observable effect assuming exposure at one thousand (1000) times the level in question for substances known to the state to cause reproductive toxicity ..." Warnings are to be given *prior* to exposing individuals to a listed chemical, unless the safe harbor exemption can be shown to apply. Therefore, those responsible for an exposure must be able to determine whether the exemption applies beforehand.

Determining whether the safe harbor applies requires determining Reasonably Anticipated Rate of Exposure. (27 CCR §25821(b) ["the level of exposure to a chemical listed as causing reproductive toxicity shall be determined by multiplying the level in question (stated in terms of a concentration of a chemical in a given medium) times the reasonably anticipated rate of exposure for an individual to a given medium"].) Determining Reasonably Anticipated Rate of Exposure requires determining "the pattern and duration of exposure that is relevant to the reproductive effect which provided the basis" for listing—including whether the relevant pattern and duration is a protracted exposure, for which consumption is properly averaged over time. (*Ibid.*) Basing this determination on the administrative record behind the original listing decision allows it to be made "prior to exposure." (See FSOR, p. 82.) Basing it on whatever post-listing evidence might be marshaled in a post-exposure private enforcement action does not.

Indeed, if private enforcers could use evidence beyond the administrative record to show pattern and duration, that would make even a litigated harbor insecure and unsafe—because "a trial court determination" that is based on "the testimony and opinions of dueling experts serving partisan commitments" can only be "based on the state of the scientific inquiry *at a given point in time*," and is therefore subject to perpetual revision. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1573, 1575 ["*Tri-*

Union"].) Nor is it proper to insist that businesses prophylactically default to a pattern and duration that excludes averaging of consumption—because OEHHA, in promulgating the safe harbor regulations, was at pains to minimize the risk that "persons in the course of doing business involving the chemicals" who are "not ... able to determine whether they are in compliance with the Act" will "unnecessarily alter their business practices, or provide unnecessary warnings which may dilute the effectiveness overall of warnings under the Act." (FSOR, p. 70.)

Requiring pattern and duration to be determined with reference to the administrative record is the only way to accomplish the statutory and regulatory aim of providing a truly *safe* harbor.

4. Prop 65 vests primary responsibility for its implementation in the executive, in consultation with appointed experts—not the judiciary.

CTWG charges Pictsweet with violating this provision: "No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause ... reproductive toxicity without first giving clear and reasonable warning to such individual, except as provided in Section 25249.10." (HSC §25249.6.) Note the phrase: "known to the state." A different section of Prop 65 identifies actors through whom the state is to acquire and disseminate this knowledge:

> (a) ... [T]he Governor shall cause to be published a list of those chemicals known to the state to cause ... reproductive toxicity ... and he shall cause such list to be revised and republished in light of additional knowledge at least once per year ...
>
> (b) A chemical is known to the state to cause ... reproductive toxicity ... if in the opinion of the state's qualified experts it has been clearly shown through scientifically valid testing according to generally accepted principles to cause ... reproductive toxicity ...
>
> (d) The Governor shall identify and consult with the state's qualified experts as necessary to carry out his duties under this section.

(HSC, §25249.8.) "It is emphatically the province and duty of the judicial department to say what the law is." (*Marbury v. Madison* (1803) 5 U.S. 137, 177.) But under Prop 65,

it is emphatically the province of the executive and its appointed experts, *not* the judiciary, to decide and declare what the state knows about reproductive toxicants.

"[T]he doctrine of separation of powers ... (1) sanctions legislative delegation of authority to an appropriate administrative agency and (2) acknowledges the presumed expertise of the agency." (*Stauffer Chem. Co. v. Air Resources Bd.* (1982) 128 Cal.App.3d 789, 795.) Especially "[i]n technical matters requiring the assistance of experts and the study of marshalled scientific data ... courts will permit administrative agencies to work out their problems with as little judicial interference as possible." (*Ibid.*) Where the "nature of the subject matter" is "intricate and technical," and "administration requires ... expertise and full technical knowledge," "[i]t would be presumptuous of a court to claim such skill." (*Pitts v. Perluss* (1962) 58 Cal. 2d 824, 832.)

Judicial circumspection is especially proper here because listing decisions under Prop 65 are "quasi-legislative" acts. (*Exxon Mobil Corp. v. OEHHA* (2009) 169 Cal.App.4th 1264, 1276 fn. 10; see also *Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1012 ["Quasi-legislative rules are those that the agency promulgates as part of the lawmaking power the Legislature has delegated to it."].) "[E]xcessive judicial interference with ... quasi-legislative actions would conflict with the well-settled principle that the legislative branch is entitled to deference from the courts because of the constitutional separation of powers." (*Western States Petroleum Assn. v. Superior Court* (2005) 9 Cal.4th 559, 572 ["*Western States*"].) Further, "extra-record evidence" "is generally not admissible to challenge quasi-legislative decisions." (*Id.* at p. 565.)

Cadmium was listed as a reproductive toxicant based on extensive agency work and analysis. On CTWG's theory, the significance of that work is exhausted in the listing decision; from that point forward, the scope of the resulting warning obligation gets worked out by judges, based on whatever evidence the parties before them choose to present, without regard to OEHHA's deliberations. Were CTWG correct, and OEHHA's work is of no moment once its listing decision is made, it would open the floodgates to private enforcement actions, the antithesis of deference to that agency.

> It bears contemplating ... whether the truth about complex, threshold scientific issues encompassed within Proposition 65 ... is best derived by application of the substantial evidence rule to the testimony and opinions of dueling experts serving partisan commitments. The public has a significant health and welfare interest in the accurate determination of these issues based on the whole scientific truth of the matter—or as near to the whole truth as is possible.

(*Tri-Union,* 171 Cal.App.4th at p. 1573.) Where possible, such determinations are more properly "lodged with the OEHHA and its scientific advisors, rather than left to dueling expert witnesses in a trial court setting." (See *id.* at p. 1575.) Thus, separation of powers principles also support determining pattern and duration with reference to the administrative record.

5. CTWG's argument from the meaning of "reproductive effect" fails.

CTWG sought and obtained a ruling from the court that "reproductive effect," as used in 27 CCR §25821(b), refers to the "type of reproductive toxicity" found in the second column of 27 CCR §27001(c). (March 13, 2026 Minute Order, p. 2.) For the cadmium listing, this column states: "developmental, male"—indicating that cadmium was listed for developmental toxicity and for male reproductive toxicity.

As set forth above, in adopting the safe harbor regulations, OEHHA explicitly recognized that although "consult[ing] the list" is the starting point for determining "which effects provide the basis for the listing," it is not always the end. (See FSOR, p. 74.) Instead, especially where averaging can make a difference to the outcome, "more specific information," including "the *specific* reproductive effect of concern," is properly obtained from the administrative record. (See *ibid.* [italics added].)

CTWG argued at trial: "Teratogenicity is part of developmental toxicity and part of male reproductive effect. It's impossible to carve it out of the toxicity." (March 13, 2026 R.T. 127:6–9.) Superficially, CTWG has a point. Neither the statute nor the regulations use the terms "developmental toxicity" or "male reproductive toxicity" (or "female reproductive toxicity"). Instead, those terms became part of Prop 65 analysis through the November

1993 *Criteria for Recommending Chemicals for Listing as "Known to the State to Cause Reproductive Toxicity"* ("Criteria," available online,[11] introduced at trial as Exhibit 40)—which sets forth the "criteria" that "shall be utilized by [DARTIC] to identify chemicals to be recommended as known to the State to cause reproductive toxicity." (Criteria, §1.A.) The Criteria's definition of "developmental toxicity" includes "malformations, structural abnormalities and variations, altered fetal growth, and change in gestational age at delivery." (Criteria, §2.C(1).) Malformations are indicative of teratogenicity. Thus, in that limited sense, teratogenicity may indeed be "part of developmental toxicity."

But CTWG's reliance on bare definitions is misplaced. The governing regulation illustrates how pattern and duration depend on "the reproductive effect which provided the basis" as follows: "For example, an exposure of short duration is appropriate for a teratogenic chemical, whereas a chronic or protracted exposure is appropriate for one that retards fetal growth." (27 CCR §25821(b).) Teratogenicity (i.e., malformation causation) and fetal growth retardation are *both* covered by the definition of "developmental toxicity." But the regulation specifies "an exposure of short duration … for a teratogenic chemical" and "a chronic or protracted exposure … for one that retards fetal growth." Thus, the fact that the definitions of the general toxicity types for which cadmium was listed may include teratogenicity is not dispositive. Instead, "the *specific* reproductive effect of concern" must be discerned, and this is done by consulting the administrative record. (See FSOR, p. 74 [italics added].)

6. CTWG's "frozen-science" complaint is misdirected.

CTWG's characterization of the court's regulatory construction as a "medieval," "frozen-science interpretation of §25821(b)" misses the mark. (See April 1, 2026, Plaintiff's Phase I Trial Brief, p. 10, line 2; p. 13, line 11.) "Any interested person may request the lead agency to issue an interpretive guideline concerning any subject related to the Act." (See

[11] See *Office of Environmental Health Hazard Assessment* <https://oehha.ca.gov/sites/default/files/media/downloads/proposition-65/proposition-65/dartcriterianov1993.pdf>

27 CCR §25203(a).) The Court's ruling does not prevent CTWG from asking OEHHA to update its work in view of more recent science. But CTWG would have the Court step into OEHHA's shoes to divine for itself new and different toxicological reproductive effects beyond those that "provided the basis" to list cadmium. (See 27 CCR §25821(b).) Examining and applying the administrative record of the agency decision to list cadmium is within the Court's core competence. Deciding whether the march of science has left OEHHA's work behind is not.

As a matter of regulatory construction, the Court rules that 27 CCR §25821(b) requires the pattern and duration of exposure relevant to Reasonably Anticipated Rate of Exposure—including whether or not to average consumption over "a chronic or protracted exposure"—to be determined from the administrative record of a chemical's listing as a reproductive toxicant, if possible, rather than from extra-record, post-listing science.

B. Dr. Boomhower showed that the administrative record behind cadmium's listing calls for a pattern and duration of exposure that is protracted.

Dr. Boomhower testified that for oral exposure to cadmium through ingestion, averaging consumption over time is appropriate because the administrative record reveals that the pattern and duration relevant to the listing basis is protracted exposure.

To frame his analysis of the record, Dr. Boomhower considered the Criteria described above, as well as the statutory requirement that "the state's qualified experts" determine that cadmium "has been *clearly* shown through scientifically valid testing according to generally accepted principles to cause … reproductive toxicity." (HSC §25249.8(b) [italics added]; see also 27 CCR §25305(b)(1) [authorizing DARTIC to "Render an opinion, pursuant to subdivision (b) of Section 25249.8 of the Act, as to whether specific chemicals have been clearly shown, through scientifically valid testing according to generally accepted principles, to cause reproductive toxicity."].)

To identify the "scientifically valid testing" by which DARTIC determined the reproductive toxicity of cadmium had been "clearly shown" (see HSC §25249.8(b)),

Dr. Boomhower reviewed and considered *Evidence on Developmental and Reproductive Toxicity of Cadmium* ("OEHHA 1996"; available online,[12] introduced at trial as Exhibit 42). This is a document prepared by OEHHA staff scientists and provided to DARTIC in October 1996, which describes itself as: a "review [of] the evidence concerning the developmental and reproductive toxicity of cadmium." (*Id.*, p. 7.) Dr. Boomhower also reviewed and considered *Proposition 65 Maximum Allowable Daily Level (MADL) for Reproductive Toxicity for Cadmium (Oral Route)* (available online,[13] introduced at trial as Exhibit 41), which was prepared in connection with OEHHA's promulgation of a regulatory MADL for cadmium. And Dr. Boomhower reviewed and considered the studies and other sources cited in those two OEHHA documents.

Under the Criteria, "'reproductive toxicity' includes 'developmental toxicity', 'female reproductive toxicity', and 'male reproductive toxicity'." (Criteria, §2.B.) Thus, the Prop 65 list for reproductive toxicants includes a column headed "Type of Reproductive Toxicity" that indicates, for each listed chemical, which of those three types it was listed for. (27 CCR §27001(c).) Cadmium is listed for developmental and male reproductive toxicity, but not female reproductive toxicity. (*Ibid.*)

Reproductive effects must be shown by "at least one of the following": "A. Sufficient evidence in humans"; "B. Limited evidence or suggestive evidence in humans, supported by sufficient experimental animal (mammalian) data"; or "C. Sufficient evidence in experimental animals (mammals), such that extrapolation to humans is appropriate." (Criteria, §3.) For cadmium's developmental reproductive effects, OEHHA 1996 reported:

> The developmental toxicity of Cd has been studied in animal models and in humans. … While interpretation of the human epidemiological studies is complicated by the difficulty of controlling for confounding exposures, particularly cigarette smoke and Pb, the overall evidence from human studies is consistent with that from experimental animals.

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[12] *Office of Environmental Health Hazard Assessment* <https://oehha.ca.gov/sites/default/files/media/downloads/proposition-65/chemicals/cd-hid.pdf>

[13] *Office of Environmental Health Hazard Assessment* <https://oehha.ca.gov/sites/default/files/media/downloads/crnr/cadmium20madl.pdf>

(OEHHA 1996, §3.5, p. 31.) For male reproductive effects, it reported:

> Studies in humans and experimental animals have addressed fertility, testicular pathology, and sperm and semen parameters. … Evidence available from studies in humans does not contradict the experimental results, but the human data alone do not demonstrate a causal relationship between cadmium exposure and male reproductive toxicity.

(*Id.*, §5.4, p. 59.) Thus OEHHA 1996 points toward cadmium having been listed based on the Criteria's second standard: "Limited evidence or suggestive evidence in humans, supported by sufficient experimental animal (mammalian) data." (See Criteria, §3.B.)

1. Dr. Boomhower testified persuasively about the effects shown by the evidence on which DARTIC based its listing decision.

Against that backdrop, Dr. Boomhower testified at length about what was shown by the human and mammalian data on which DARTIC based its listing decision. The Criteria defines "developmental toxicity" as including:

> (1) Embryo/fetal mortality …, malformations, structural abnormalities and variations, altered fetal growth, and change in gestational age at delivery.
>
> (2) Postnatal parameters including growth and development, physiological deficits and delay, neurological, neurobehavioral and psychological deficits, altered sex ratio, abnormal sexual development or function, and morbidity or mortality.
>
> (3) Transplacental carcinogenesis.
>
> (4) Somatic or genetic (germ cell) mutations in the conceptus.

(Criteria, §2.C.) On direct examination, Dr. Boomhower testified that OEHHA 1996 described clear evidence of altered fetal growth and neurobehavioral deficits, at least in mammalian studies, but none of the other developmental effects listed. (Feb. 23, 2026, R.T. 95:11–103:22; see also OEHHA 1996, § 3.5, pp. 31, 33 ["The most consistently observed effects of oral or inhalation exposure to Cd on the development of experimental animals are reductions in fetal or birthweight, followed by alterations in locomotor behavior. Retarded ossification of skeletal elements has also been found."; "Overall, the most consistent effects on development, when Cd exposure is by a relevant route of exposure, are on growth parameters, followed by locomotor behavior."].) Dr. Boomhower also

testified that OEHHA 1996 discounted any evidence of malformations. (Feb. 23, 2026, R.T. 104:13–124:17; see also OEHHA 1996, § 2.5, p. 32 ["Malformations have been reported with Cd exposure under some circumstances, in both humans and animals, but are not a consistent finding with relevant routes of exposure."].) Dr. Boomhower testified that his own review of the materials cited by OEHHA 1996 yielded the same conclusions. (Feb. 23, 2026 R.T. 123:22–124:17.)

The Criteria defines "male reproductive toxicity" to include:

(1) Adverse effects on reproductive structure or function including:
(2) Genetic damage to the spermatozoon or its precursors.
(3) Impaired sperm and/or seminal fluid production, including alterations in sperm number, morphology, motility, and ability to fertilize.
(4) Impaired or altered endocrine function.
(5) Impaired reproductive performance (e.g., sub fertility, infertility, or impotence).

(Criteria, §2.E.)

Dr. Boomhower testified that OEHHA 1996 discerned clear evidence only of alterations in sperm number and motility, and not of the other listed effects. (Feb. 23, 2026 R.T. 103:23–104:12; see also OEHHA 1996, § 5.4, p. 60 ["Sperm counts and motility have been shown to be depressed in Cd-exposed animals … after long-term treatment."].) As with developmental toxicity, Dr. Boomhower also testified that his own review of the materials cited led him to the same conclusions. (Feb. 27, 2026, R.T. 34:8–28.)

Based on Dr. Boomhower's testimony and the materials on which he based his testimony, including OEHHA 1996, the court determines that: (1) cadmium was listed for developmental toxicity based on primarily mammalian evidence of reduced birthweight and altered locomotor behavior; (2) cadmium was listed for male reproductive toxicity based on primarily mammalian evidence of decreased sperm count and motility; and (3) cadmium was not listed as a reproductive toxicant based on evidence of malformations.

2. Dr. Boomhower testified persuasively that the pattern and duration relevant to the basis for listing involves protracted exposure.

Dr. Boomhower further testified that in view of his conclusions about the basis for listing, the relevant pattern and duration is a protracted exposure, with consumption averaged over time, rather than a one-time exposure. Dr. Boomhower reached and supported this conclusion in two ways.

First, the governing regulation provides: "an exposure of short duration is appropriate for a teratogenic chemical, whereas a chronic or protracted exposure is appropriate for one that retards fetal growth." (27 CCR §25821(b).) Dr. Boomhower testified that teratogenicity is tied to malformations. (Feb. 23, 2026, R.T. 105:26–106:10, 108:5–7.) Because malformations were not a basis for cadmium being listed as a reproductive toxicant, "an exposure of short duration" *is not* appropriate under the regulation, and "a chronic or protracted exposure" *is* appropriate. (Feb. 23, 2026 R.T. 140:19–141:5.)

Second, Dr. Boomhower testified that the studies clearly showing reduced birthweight, altered locomotor behavior, and decreased sperm count and motility—i.e., the effects that provided the basis for listing—were conducted using protracted exposures. (Feb. 23, 2026 R.T. 130:26–132:11.) Thus, again, based on OEHHA 1996, the underlying studies evidencing these effects, and Dr. Boomhower's testimony, the pattern and duration relevant to the basis for listing is a protracted exposure. (Feb. 23, 2026 R.T. 134:5–19.)

Based on Dr. Boomhower's testimony and the materials on which he based his testimony, including OEHHA 1996, the Court determines that the pattern and duration of exposure relevant to the reproductive effects that provided the basis for cadmium being listed as a reproductive toxicant under Prop 65 is a chronic or protracted exposure, and that averaging of consumption is therefore appropriate.

C. Dr. Scrafford showed that the Level of Exposure to cadmium from Pictsweet's Product does not exceed the regulatory MADL of 4.1 μg/day.

Recall that to establish its safe harbor defense, Pictsweet had to show:

$LOE \leq MADL$

Where:

LOE = LQ × RARE

For the MADL, Pictsweet relied on OEHHA's predetermined value of 4.1 μg/day. (See 27 CCR §25805(b).) By relying on the regulatory MADL, Pictsweet removed this issue from dispute. (See 27 CCR §25805(a).) Therefore, to establish its defense, Pictsweet only had to show that Level of Exposure does not exceed 4.1 μg/day. Once Dr. Boomhower showed that Reasonably Anticipated Rate of Exposure should be determined based on a protracted exposure, Dr. Scrafford then showed that this led to a value for Level Of Exposure that was less than the MADL.

Dr. Scrafford determined Level in Question from CTWG test results showing an average cadmium concentration of 0.331 μg per gram of Product. (See §0, *ante,* p. 11.) For Reasonably Anticipated Rate of Exposure, Dr. Scrafford multiplied the amount of frozen spinach per EO times the number of EOs per day; thus:

RARE = amount per EO × EOs per day

Using NHANES data, Dr. Scrafford determined that the amount of frozen spinach consumed per EO is 17.8 grams. Using NET data, Dr. Scrafford determined that the number of EOs per day is 0.11 (i.e., users of frozen spinach consume it on average every nine days). Using those values, Dr. Scrafford determined that Reasonably Anticipated Rate of Exposure for frozen spinach is 2.0 grams per day. That is:

RARE = 17.8 g/EO × 0.11 EO/day = 2.0 g/day

(See §0, *ante,* p. 12.) This results in Level of Exposure well below the MADL of 4.1 μg per day—because 0.331 μg of cadmium per gram of Product (Level in Question, or LQ) times 2.0 grams of Product per day (Reasonably Anticipated Rate of Exposure, or RARE) is 0.662 μg of cadmium per day. That is:

0.331 μg/g × 2.0 g/day = 0.662 μg/day

(See §0, *ante,* p. 13.) This is sourced and more fully described above. The court credits Dr. Scrafford's testimony, as set forth in §§0–0, *ante,* and adopts her conclusions

and analysis as its own.

C. The appropriate averaging period is 60 days.

The NET data set on which Dr. Scrafford relied to determine frequency of consumption measures consumption patterns of average consumers over a period of 14 days. (March 12, 2026 R.T. 72:12–15, 74:25–75:6.) Dr. Boomhower, however, testified that the exposure period over which consumption should be averaged is 60+ days. (Feb. 23, 2026 R.T. 134:20–135:15.) Dr. Scrafford's testimony addressed the interaction between these two numbers. Specifically, Dr. Scrafford testified that less-frequent consumers are under-represented in shorter periods—which skews the frequency of consumption, and therefore Level of Exposure, higher. (March 12, 2026 R.T. 73:20–74:19.) Thus, if Level of Exposure satisfies the safe harbor condition (less than or equal to MADL) using a shorter period, it would also satisfy the condition using the longer period. (Mar. 12, 2026 R.T. 72:20-74:18.) Because measuring consumption over a shorter period than the full exposure period thus biases the analysis *against* finding the safe harbor condition to be satisfied, Dr. Scrafford's opinion and analysis are not undermined by the fact that she used frequency of consumption data based on a shorter period. (*Ibid.*)

Dr. Scrafford's testimony about measurement periods also helps to explain and fortify Dr. Boomhower's 60-day opinion. Dr. Boomhower testified that absent some reason to use a shorter period, the default averaging period for non-teratogenic developmental effects would be the entire gestational period and the default averaging period for male reproductive effects relating to sperm production and activity would be the period of spermatogenesis. (Feb. 23, 2026, R.T. 134:14–139:9; see also 27 CCR §25821(c)(3) ["Where a maternal exposure to a chemical listed as causing reproductive toxicity has an effect on the conceptus (embryo or fetus), the level of exposure shall be based on the reasonably anticipated rate of exposure for the mother during the nine-month gestation period."].) Dr. Boomhower also testified that in the studies showing the effects that provided the basis for listing, the period of exposure equaled or exceeded the full duration

of gestation (for developmental effects) or spermatogenesis (for male reproductive effects) in the animals tested. (Feb. 23, 2026, R.T. 130:26–132:11.)

The "nine-month gestation period" is so commonplace that it is written into the regulations. (See §25821(c)(3).) But the spermatogenic period is not as well known. Dr. Boomhower had to find and cite a source for it, and he settled on a 2006 study by Misell, to fix the period of spermatogenesis at 60 days. (Feb. 23, 2026 R.T. 134:27–136:15.) Due to the interplay that Dr. Scrafford testified about, Dr. Boomhower's decision to rely on Misell rather than some other source does not matter unless a different source would have shown the spermatogenic period to be shorter than the 14-day period covered by Dr. Scrafford's consumption data. Rather than presenting any such source, CTWG suggested that Misell supports a 42-day period. But even if that were so—and Dr. Boomhower testified persuasively it is not—the outcome would not change because 42 days is still longer than the 14 days covered by Dr. Scrafford's frequency-of-consumption data.

Similar considerations guided Dr. Boomhower's choice between the 9-month gestational period and the 60-day spermatogenic period. A choice is called for because the statute and regulations impose a single warning requirement for reproductive toxicity, generally, rather than separate warning requirements for developmental and male reproductive toxicity. (See 27 CCR §25603.) As between the two periods, Dr. Boomhower testified that the shorter period should be used, based on Dr. Scrafford's testimony about the interaction between exposure period and frequency of consumption. (Feb. 23, 2026 R.T. 138:26–139:9.)

The court determines that oral exposure to cadmium is properly averaged over a period of 60 days.

IV. CONCLUSION

Based on the evidence and credibility of witnesses, the court concludes that Pictsweet met its burden of proof by preponderance of the evidence to establish that the Level of Exposure to cadmium from the Product does not exceed the MADL of 4.1 µg/day. Based

on the totality of evidence presented, the court concludes that Pictsweet has met its burden of proof by preponderance of evidence to establish that it was in compliance Prop 65 at the time the Product was purchased, and that the Product did not and does not require Prop 65 warnings. Therefore, a complete defense to CTWG's claim has been established and defendants are entitled to judgment in their favor.

Dated: 7/30/26

Lawrence P. Riff
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Stanley Mosk Courthouse 111 North Hill Street, Los Angeles, CA 90012	FILED Superior Court of California County of Los Angeles 07/30/2026 David W. Slayton, Executive Officer / Clerk of Court By: H. Kim Deputy
PLAINTIFF/PETITIONER: The Chemical Toxin Working Group, Inc.	
DEFENDANT/RESPONDENT: The PictSweet Co., et al.	
CERTIFICATE OF MAILING	CASE NUMBER: 24STCV08902

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Minute Order (Non-Appearance Case Review re: Receipt of Objections to Propo...) of 07/30/2026, Statement of Decision upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

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CERTIFICATE OF MAILING

SHORT TITLE: THE CHEMICAL TOXIN WORKING GROUP, INC., A CALIFORNIA NON-PROFIT CORPORATION vs THE PICTSWEET CO., A TENNESSEE-BASED COMPANY, et al.	CASE NUMBER: 24STCV08902

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