

BILL LOCKYER
Attorney General
THOMAS GREENE
Chief Assistant Attorney General
THEODORA BERGER
Senior Assistant Attorney General
EDWARD G. WEIL
Supervising Deputy Attorney General
SUSAN S. FIERING State Bar No. 121621
HARRISON POLLAK State Bar No. 200879
Deputy Attorneys General
1515 Clay Street, Suite 2000
Oakland, CA 94612

Attorneys for People of the State of California
ex rel. Bill Lockyer, Attorney General of the
State of California

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

PEOPLE OF THE STATE OF CALIFORNIA, ex rel.
BILL LOCKYER, Attorney General of the State of
California,

Plaintiff,

v.

TRI-UNION SEAFOODS, LLC., DEL MONTE
CORPORATION, BUMBLE BEE SEAFOODS, LLC,
and DOES 1 through 100,

Defendants,

Case No.:

COMPLAINT FOR CIVIL
PENALTY AND INJUNCTIVE
RELIEF
Business Tort/Unfair Business
Practice (07)
Toxic Tort/Environmental (30)

I. INTRODUCTION

1. This complaint seeks an injunction and civil penalties to remedy defendants' failure to warn consumers that canned and packaged tuna fish products ("Tuna Products") sold by defendants expose consumers to chemicals known to the State of California to cause cancer and reproductive harm. Under the Safe Drinking Water and Toxic Enforcement Act of 1986,

1 Health and Safety Code section 25249.6, also known as "Proposition 65," businesses must
2 provide persons with a "clear and reasonable warning" before exposing them to such chemicals.

3 **II. PARTIES**

4 2. Plaintiffs are the People of the State of California, by and through the Attorney
5 General of California, Bill Lockyer. Health and Safety Code section 25249.7(c) provides that
6 actions to enforce Proposition 65 may be brought by the Attorney General in the name of the
7 People of the State of California. Government Code section 12607 authorizes the Attorney
8 General to bring an action for equitable relief in the name of the People of the State of California
9 against any person to protect the natural resources of the State from pollution, impairment, or
10 destruction. Business and Professions Code section 17200 provides that actions to prohibit
11 unfair and unlawful business practices may be brought by the Attorney General in the name of
12 the People of the State of California.

13 3. Defendant Tri-Union Seafoods, LLC is a business entity that distributes and/or
14 sells Tuna Products to consumers within the State of California.

15 4. Defendant Del Monte Corporation is a business entity that distributes and/or sells
16 Tuna Products to consumers within the state of California.

17 5. Defendant Bumble Bee Seafoods, LLC is a business entity that distributes and/or
18 sells Tuna Products to consumers within the state of California.

19 9. The true names and capacities of the defendants sued herein as Does 1 through
20 100 are unknown to plaintiff, who therefore sues them by such fictitious names. Plaintiff will
21 amend this complaint to allege the true names and capacities of these defendants when they have
22 been determined. Each of the fictitiously named defendants is responsible in some manner for
23 the conduct alleged herein.

24 **III. JURISDICTION AND VENUE**

25 10. This Court has jurisdiction pursuant to California Constitution Article VI, section
26 10, because this case is a cause not given by statute to other trial courts.

27 11. This Court has jurisdiction over the defendants named above because they do
28 sufficient business in California, or otherwise have sufficient minimum contacts in California to

render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

12. Venue is proper in this Court because the cause arises in the City and County of San Francisco where some of the violations of law have occurred.

IV. STATUTORY BACKGROUND

A. Proposition 65

16. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute passed as "Proposition 65" by a vote of the People in November of 1986.

17. The warning requirement of Proposition 65 is contained in Health and Safety Code section 25249.6, which provides:

No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual, except as provided in Section 25249.10

18. Implementing regulations promulgated by the Health and Welfare Agency provide that the warning method "must be reasonably calculated, considering the alternative methods available under the circumstances, to make the warning message available to the individual prior to exposure." (22 CCR § 12601(a).)

19. The regulations prescribe certain types of warnings that are considered valid, including: (A) warnings on labels, (B) identification at the retail outlet through "shelf labeling, signs, menus, or a combination thereof," and (C) "a system of signs, public advertising identifying the system and toll-free information services, that provides clear and reasonable warnings." 22 CCR §§ 12601(b)(1)(A)-(C).

20. Proposition 65 also establishes a procedure by which the state is to develop a list of chemicals "known to the State to cause cancer or reproductive toxicity." Health & Safety Code section 25249.8. No warning need be given concerning a listed chemical until one year after the chemical first appears on the list. Id., § 25249.10(b).

21. Proposition 65 provides that any person "violating or threatening to violate" the statute may be enjoined in any court of competent jurisdiction. Health & Safety Code, §

1 25249.7. To "threaten to violate" is defined to mean "to create a condition in which there is a
2 substantial probability that a violation will occur." Id., § 25249.11(e). In addition, violators are
3 liable for civil penalties of up to \$2,500 per day for each violation, recoverable in a civil action.
4 Id., § 25249.7(b). Actions to enforce the law "may be brought by the Attorney General in the
5 name of the People of the State of California or by any district attorney". Id., § 25249.7(c).

6 **B. The Unfair Competition Act**

7 22. California Business and Professions Code section 17200 provides that "unfair
8 competition shall mean and include unlawful, unfair or fraudulent business practice." Section
9 17203 of the Business and Professions Code provides that "(a)ny person performing or
10 proposing to perform an act of unfair competition within this state may be enjoined in any court
11 of competent jurisdiction."

12 23. Section 17206(a) provides that any person violating Section 17200 "shall be liable
13 for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation,
14 which shall be assessed and recovered in a civil action brought in the name of the people of the
15 State of California by the Attorney General or by any district attorney." Under section 17205,
16 these penalties are "cumulative to each other and to the remedies or penalties available under all
17 other laws of this state."

18 **V. FACTS**

19 24. Methylmercury compounds were listed under Proposition 65 as a chemical known
20 to the State of California to cause cancer on May 1, 1996. Methyl mercury was listed as a
21 chemical known to the State of California to cause reproductive toxicity on July 1, 1987.
22 Mercury and mercury compounds were listed as chemicals known to cause reproductive toxicity
23 on July 1, 1990. 22 CCR § 12000.

24 25. Defendants sell Tuna Products. The Tuna Products contain mercury and mercury
25 compounds and methyl mercury and methylmercury compounds, which are ingested by persons
26 eating the Tuna Products. Each defendant knows or has known since at least July 1, 1988 that
27 the Tuna Products contain methyl mercury; since May 1, 1997 that the Tuna Products contain
28 methylmercury compounds; and since July 1, 1991 that the Tuna Products contain mercury and

mercury compounds, and that persons eating the Tuna Products are exposed to these chemicals.

26. From at least July 1, 1988 to the present, Defendants have failed to provide consumers of the Tuna Products with a clear and reasonable warning that they are being exposed to a chemical known to the State of California to cause birth defects or other reproductive harm.

27. From at least May 1, 1997 to the present Defendants have failed to provide consumers of the Tuna Products with a clear and reasonable warning that they are being exposed to a chemical known to the State of California to cause cancer.

VI. FIRST CAUSE OF ACTION

(For Violation of Proposition 65)

28. Paragraphs 1 through 27 are realleged as if fully set forth herein.

29. Plaintiffs are informed and believe, and based on such information and belief allege, that each defendant employs ten or more persons.

30. By committing the acts alleged above, each defendant has, in the course of doing business, knowingly and intentionally exposed individuals to mercury and mercury compounds and methyl mercury and methylmercury compounds, chemicals known to the state of California to cause cancer and reproductive toxicity, without first giving clear and reasonable warning to such individuals, within the meaning of Health and Safety Code section 25249.6.

31. Said violations render each defendant liable to plaintiff for civil penalties of up to \$2,500 per day for each violation.

VII. SECOND CAUSE OF ACTION

(For Unlawful Business Practices)

32. Paragraphs 1 through 31 are realleged as if fully set forth herein.

33. By committing the acts alleged above, each defendant has engaged in unlawful business practices which constitute unfair competition within the meaning of Business and Professions Code section 17200.

34. Said violations render each defendant liable to plaintiff for civil penalties of up to \$2,500 for each violation.

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PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray that the Court:

- 1. Pursuant to the First and Second Causes of Action, grant civil penalties according to proof;
- 2. Pursuant to Health and Safety Code section 25249.7, and Business and Professions Code sections 17203, enter such preliminary injunctions, permanent injunctions, or other orders prohibiting each defendant from exposing persons within the State of California to mercury and mercury compounds and methyl mercury and methylmercury compounds without providing clear and reasonable warnings, as plaintiffs shall specify in further application to the court;
- 3. Award plaintiffs their costs of suit;
- 4. Grant such other and further relief as the court deems just and proper.

Dated: June 21, 2004

Respectfully submitted,
BILL LOCKYER, Attorney General
of the State of California
THOMAS GREENE
Chief Assistant Attorney General
THEODORA BERGER
Senior Assistant Attorney General
EDWARD G. WEIL
Supervising Deputy Attorney General
SUSAN S. FIERING
HARRISON POLLAK
Deputy Attorneys General

By: _____
SUSAN S. FIERING
Deputy Attorney General
Attorneys for the People