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ORIGINAL FILED
Superior Court of California
County of Los Angeles

JUN 18 2014

Sherri R. Carter, Executive Officer/Clerk
By Cristina Grijalva, Deputy

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF LOS ANGELES**

BC 549139

11 CONSUMER ADVOCACY GROUP, INC.,
12 in the public interest,

13 Plaintiff,

14 v.

15 B & V ENTERPRISES, INC., a California
16 Corporation; and DOES 1-20;

17 Defendants.

CASE NO.

COMPLAINT FOR PENALTY AND
INJUNCTION

Violation of Proposition 65, the Safe
Drinking Water and Toxic Enforcement
Act of 1986 (*Health & Safety Code*, §
25249.5, *et seq.*)

ACTION IS AN UNLIMITED CIVIL
CASE (exceeds \$25,000)

20 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
21 Defendants B & V ENTERPRISES, INC., and DOES 1-20 as follows:

22 **THE PARTIES**

- 23 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an
24 organization qualified to do business in the State of California. CAG is a person within
25 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting
26 as a private attorney general, brings this action in the public interest as defined under
27 Health and Safety Code section 25249.7, subdivision (d).

- 1 2. Defendant B & V ENTERPRISES, INC. ("B&V") is a California corporation, doing
2 business in the State of California at all relevant times herein.
- 3 3. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20,
4 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
5 complaint to allege their true names and capacities when ascertained. Plaintiff is
6 informed, believes, and thereon alleges that each fictitiously named defendant is
7 responsible in some manner for the occurrences herein alleged and the damages caused
8 thereby.
- 9 4. At all times mentioned herein, the term "Defendants" includes B&V, and DOES 1-20.
- 10 5. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
11 times mentioned herein have conducted business within the State of California.
- 12 6. Upon information and belief, at all times relevant to this action, each of the Defendants,
13 including DOES 1-20, was an agent, servant, or employee of each of the other
14 Defendants. In conducting the activities alleged in this Complaint, each of the
15 Defendants was acting within the course and scope of this agency, service, or
16 employment, and was acting with the consent, permission, and authorization of each of
17 the other Defendants. All actions of each of the Defendants alleged in this Complaint
18 were ratified and approved by every other Defendant or their officers or managing agents.
19 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged
20 wrongful conduct of each of the other Defendants.
- 21 7. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
22 Defendants was a person doing business within the meaning of Health and Safety Code
23 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more
24 employees at all relevant times.

25 **JURISDICTION**

- 26 8. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
27 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
28 those given by statute to other trial courts. This Court has jurisdiction over this action

1 pursuant to Health and Safety Code section 25249.7, which allows enforcement of
2 violations of Proposition 65 in any Court of competent jurisdiction.

- 3 9. This Court has jurisdiction over Defendants named herein because Defendants either
4 reside or are located in this State or are foreign corporations authorized to do business in
5 California, are registered with the California Secretary of State, or who do sufficient
6 business in California, have sufficient minimum contacts with California, or otherwise
7 intentionally avail themselves of the markets within California through their manufacture,
8 distribution, promotion, marketing, or sale of their products within California to render
9 the exercise of jurisdiction by the California courts permissible under traditional notions
10 of fair play and substantial justice.
- 11 10. Venue is proper in the County of Los Angeles because one or more of the instances of
12 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
13 because Defendants conducted, and continue to conduct, business in the County of Los
14 Angeles with respect to the consumer product that is the subject of this action.

15 **BACKGROUND AND PRELIMINARY FACTS**

- 16 11. In 1986, California voters approved an initiative to address growing concerns about
17 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to
18 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,
19 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
20 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections
21 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources
22 from contamination, to allow consumers to make informed choices about the products
23 they buy, and to enable persons to protect themselves from toxic chemicals as they see
24 fit.
- 25 12. Proposition 65 requires the Governor of California to publish a list of chemicals known to
26 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
27 § 25249.8. The list, which the Governor updates at least once a year, contains over 700
28

1 chemicals and chemical families. Proposition 65 imposes warning requirements and
2 other controls that apply to Proposition 65-listed chemicals.

3 13. All businesses with ten (10) or more employees that operate or sell products in California
4 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited
5 from knowingly discharging Proposition 65-listed chemicals into sources of drinking
6 water (*Health & Safety Code* § 25249.5), and (2) required to provide "clear and
7 reasonable" warnings before exposing a person, knowingly and intentionally, to a
8 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).

9 14. Proposition 65 provides that any person "violating or threatening to violate" the statute
10 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.
11 "Threaten to violate" means "to create a condition in which there is a substantial
12 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).
13 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
14 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

15 15. Plaintiff identified certain practices of manufacturers and distributors of Cadmium-
16 bearing products of exposing, knowingly and intentionally, persons in California to the
17 Proposition 65-listed chemicals of such products without first providing clear and
18 reasonable warnings of such to the exposed persons prior to the time of exposure.
19 Plaintiff later discerned that Defendants engaged in such practice.

20 16. On October 1, 1987, the Governor added Cadmium and Cadmium Compounds to the list
21 of chemicals known to the State to cause cancer, and on May 1, 1997, the Governor
22 added Cadmium to the list of chemicals known to the State to cause reproductive toxicity,
23 developmental, male. Both additions took place more than twenty (20) months before
24 CAG served this Notice.

25 **SATISFACTION OF PRIOR NOTICE**

26 17. On or about April 24, 2014, Plaintiff gave notice of alleged violations of Health and
27 Safety Code section 25249.6, concerning consumer products exposures, subject to a
28 private action to B&V and to the California Attorney General, County District Attorneys,

1 and City Attorneys for each city containing a population of at least 750,000 people in
2 whose jurisdictions the violations allegedly occurred, concerning the product Rice
3 containing Cadmium.

4 18. Before sending the notice of alleged violations, Plaintiff investigated the consumer
5 products involved, the likelihood that such products would cause users to suffer
6 significant exposures to Cadmium, and the corporate structure of each of the Defendants.

7 19. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
8 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
9 Plaintiff who executed the certificate had consulted with at least one person with relevant
10 and appropriate expertise who reviewed data regarding the exposures to Cadmium, the
11 subject Proposition 65-listed chemicals of this action. Based on that information, the
12 attorney for Plaintiff who executed the Certificate of Merit believed there was a
13 reasonable and meritorious case for this private action. The attorney for Plaintiff attached

14 to the Certificate of Merit served on the Attorney General the confidential factual
15 information sufficient to establish the basis of the Certificate of Merit.

16 20. Plaintiff's notices of alleged violations also included a Certificate of Service and a
17 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986
18 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

19 21. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
20 gave notices of the alleged violation to B&V and the public prosecutors referenced in
21 Paragraph 17.

22 22. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
23 any applicable district attorney or city attorney has commenced and is diligently
24 prosecuting an action against the Defendants.

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1 **FIRST CAUSE OF ACTION**

2 **(By CONSUMER ADVOCACY GROUP, INC. and against B & V ENTERPRISES, INC.,**
3 **and DOES 1-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
4 **Enforcement Act of 1986 (Health & Safety Code, §§ 25249.5, et seq.))**

5 **Rice**

6 23. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
7 reference paragraphs 1 through 22 of this complaint as though fully set forth herein. Each
8 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,
9 promoter, or retailer of Rice, which includes but is not limited to, "Rankey "RED
10 BASMATHI RICE" "Rice in Fiber" "Net Wt: 80oz (5lb) 2.27Kg" UPC: 8 51002 00307
11 6" ("RICE").

12 24. RICE contains Cadmium.

13 25. Defendants knew or should have known that Cadmium has been identified by the State of
14 California as a chemical known to cause cancer and reproductive toxicity and therefore
15 was subject to Proposition 65 warning requirements. Defendants were also informed of
16 the presence of Cadmium in RICE within Plaintiff's notice of alleged violations further
17 discussed above at Paragraph 17.

18 26. Plaintiff's allegations regarding RICE concerns "[c]onsumer products exposure[s],"
19 which "is an exposure that results from a person's acquisition, purchase, storage,
20 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
21 that results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*.
22 RICE are consumer products, and, as mentioned herein, exposures to Cadmium took
23 place as a result of such normal and foreseeable consumption and use.

24 27. Plaintiff is informed, believes, and thereon alleges that between April 24, 2011 and the
25 present, each of the Defendants knowingly and intentionally exposed their California
26 consumers and users of RICE, which Defendants manufactured, distributed, or sold as
27 mentioned above, to Cadmium, without first providing any type of clear and reasonable
28 warning of such to the exposed persons before the time of exposure. Defendants have
distributed and sold RICE in California. Defendants know and intend that California

1 consumers will use and consume RICE, thereby exposing them to Cadmium. Defendants
2 thereby violated Proposition 65.

3 28. The principal routes of exposure are through dermal contact, ingestion and inhalation.

4 Persons sustain exposures by handling RICE without wearing gloves or any other
5 personal protective equipment, or by touching bare skin or mucous membranes with
6 gloves after handling RICE, as well as through direct and indirect hand to mouth contact,
7 hand to mucous membrane, or breathing in particulate matter dispersed from RICE.

8 29. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
9 Proposition 65 as to RICE have been ongoing and continuous to the date of the signing of
10 this complaint, as Defendants engaged and continue to engage in conduct which violates
11 Health and Safety Code section 25249.6, including the manufacture, distribution,
12 promotion, and sale of RICE, so that a separate and distinct violation of Proposition 65
13 occurred each and every time a person was exposed to Cadmium by RICE as mentioned
14 herein.

15 30. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
16 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
17 violations alleged herein will continue to occur into the future.

18 31. Based on the allegations herein, Defendants are liable for civil penalties of up to
19 \$2,500.00 per day per individual exposure to Cadmium from RICE, pursuant to Health
20 and Safety Code section 25249.7(b).

21 32. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
22 filing this Complaint.

23 **PRAYER FOR RELIEF**

24 Plaintiff demands against each of the Defendants as follows:

- 25 1. A permanent injunction mandating Proposition 65-compliant warnings;
- 26 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
- 27 3. Costs of suit;
- 28 4. Reasonable attorney fees and costs; and

1 5. Any further relief that the court may deem just and equitable.
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4 Dated: June 7, 2014

YEROUSHALMI & YEROUSHLAMI

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7 BY: _____
8 Reuben Yeroushalmi
9 Attorneys for Plaintiff,
10 Consumer Advocacy Group, Inc.
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