

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Stephanie Bowick

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9 PUBLIC HEALTH AND SAFETY ADVOCACY, LLC.

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **COUNTY OF LOS ANGELES**

11 <b>PUBLIC HEALTH AND SAFETY</b> 12 <b>ADVOCACY, LLC., a Limited Liability</b> 13 <b>Company, in the public interest,</b> 14 <b>Plaintiff,</b> 15 <b>v.</b> 16 <b>SANYO FOODS CORPORATION OF</b> 17 <b>AMERICA; and DOES 1 through 50, inclusive,</b> 18 <b>Defendant(s).</b>	) <b>CASE NO.: 22ST CV 28996</b> ) <b>COMPLAINT FOR PENALTY AND</b> ) <b>INJUNCTION</b> ) <b>Violation of Proposition 65, the Safe Drinking</b> ) <b>Water and Toxic Enforcement Act of 1986</b> ) <b>(Health &amp; Safety Code § 25249.5, et seq.)</b> ) <b>UNLIMITED CIVIL</b>
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21 Plaintiff, **PUBLIC HEALTH AND SAFETY ADVOCACY, LLC.** alleges one (1) cause of  
22 action against Defendants, **SANYO FOODS CORPORATION OF AMERICA** and DOES 1 through  
23 50, inclusive as follows:

24 **THE PARTIES**

25 **1.** Plaintiff, **PUBLIC HEALTH AND SAFETY ADVOCACY, LLC.** (“PHSA” or  
26 “Plaintiff”) is an organization qualified to do business in the state of California. PHSA is a person within  
27 the meaning of *Health & Safety Code §25249.11(a)*, and is dedicated to protecting the public from  
28

1 environmental health hazards and toxic exposures. PHSA, acting as a private attorney general, brings  
2 this enforcement action in the public interest pursuant to *Health & Safety Code §25249.7(d)*.

3           2. Defendant, **SANYO FOODS CORPORATION OF AMERICA** is a California  
4 corporation with its headquarters and principal place of business in the state of California. Defendant is  
5 qualified to do business in California. Upon information and belief, Plaintiff contends that Defendant  
6 has conducted business within California at all relevant times herein.

7           3. Upon information and belief, Plaintiff contends that **SANYO FOODS**  
8 **CORPORATION OF AMERICA** (hereinafter, “Defendant”) manufactures and/ or imports  
9 PRODUCTS, where they distribute the PRODUCTS into the stream of commerce in California.  
10 Defendants have conducted business within California at all relevant times herein.

11           4. Plaintiff is presently unaware of the true names and capacities of Defendants, DOES 1  
12 through 50, and therefore sues these Defendants by such fictitious names. Plaintiff will amend this  
13 Complaint to allege the true names and capacities of said Defendants when the identities are ascertained.  
14 Plaintiff is informed, believes, and thereon alleges that each fictitiously named Defendant is responsible  
15 in some manner for the occurrences herein alleged and the damages caused.

16           5. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all  
17 times mentioned herein have conducted business within the state of California.

18           6. Defendants own, administer, direct, control, sell, distribute, and/or operate facilities that  
19 place PRODUCTS into the stream of commerce in California. The PRODUCTS (“PRODUCTS”) are  
20 outlined herein: SAPPORO ICHIBAN NOODLES. Due to chemicals in the PRODUCTS, the  
21 Defendants are required to provide “clear and reasonable” warnings to consumers about the chemicals  
22 under Proposition 65.

23           7. At all times mentioned herein, Defendants were legally responsible for compliance with  
24 the provisions of Proposition 65. Whenever an allegation regarding any act of any Defendant is made  
25 herein, such allegation shall be deemed to mean that Defendants, or its agents, officers, directors,  
26 managers, supervisors, or employees, did or so authorize such acts while engaged in the affairs of  
27 Defendants business operations and/or while acting within the course and scope of employment.  
28

1           **8.**    Upon information and belief, at all relevant times to this action, each of the Defendants,  
2 including DOES 1-50, was an agent, servant, or employee of each of the other Defendants. In  
3 conducting the activities alleged in this Complaint, each of the Defendants was acting within the course  
4 and scope of this agency, service, or employment, and was acting with the consent, permission, and  
5 authorization of each of the other Defendants. All actions of each of the Defendants alleged in this  
6 Complaint were ratified and approved by every other Defendant or their officers or managing agents,  
7 and/or negligently failed and omitted to act or adequately and properly supervise, control, or direct its  
8 employees and agents while engaged in the management, direction, operation, or control of the affairs of  
9 the business organizations. Alternatively, each of the Defendants aided, conspired with and/or  
10 facilitated the alleged wrongful conduct of each of the other Defendants.

12           **9.**    Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the  
13 Defendants was a person doing business within the meaning of *Health & Safety Code §25249.11(b)*, and  
14 that each of the Defendants had ten (10) or more employees at all relevant times.

15                               **JURISDICTION**

16           **10.**   This Court has jurisdiction over this action pursuant to *California Constitution,*  
17 *Article VI, Section 10*, which grants the Superior Court original jurisdiction in all causes except  
18 those given by statute to other trial courts. This Court has jurisdiction over this action pursuant to  
19 *Health and Safety Code Section 25249.7*, which allows enforcement of violations of Proposition 65  
20 in any Court of competent jurisdiction.

21           **11.**   This Court has jurisdiction over Defendants named herein because Defendants either  
22 are foreign corporations authorized to do business in California, are registered with the California  
23 Secretary of State, do sufficient business in California, have sufficient minimum contacts with  
24 California, or otherwise intentionally avail themselves of the markets within California through  
25 their manufacture, distribution, promotion, marketing, or sale of their PRODUCTS within  
26 California to render the exercise of jurisdiction by the California courts permissible under  
27 traditional notions of fair play and substantial justice.  
28

1           **12.** Venue is proper in the County of Los Angeles because one or more of the instances  
2 of wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or  
3 because the Defendants conducted, and continue to conduct business in the County of Los Angeles  
4 with respect to the consumer PRODUCTS that are the subject of this action. Said PRODUCTS are  
5 marketed, offered for sale, sold, used, and/or consumed without clear and reasonable warnings in  
6 the County of Los Angeles.  
7

8                               **BACKGROUND AND PRELIMINARY FACTS**

9           **13.** In 1986, California voters approved an initiative to address growing concerns about  
10 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to chemicals  
11 that cause cancer, birth defects, or other reproductive harm.” *Ballot Pamphlet, Proposed Law,*  
12 *Gen. Election (Nov.4, 1986) at p.3.* The initiative, the Safe Drinking Water and Toxic Enforcement  
13 Act of 1986, codified at *Health & Safety Code § 25249.5, et seq.* (“Proposition 65”), helps to  
14 protect California’s drinking water sources from contamination, to allow consumers to make  
15 informed choices about the PRODUCTS they buy, and to enable persons to protect themselves  
16 from toxic chemicals as they see fit.

17           **14.** Proposition 65 requires the Governor of California to publish a list of chemicals  
18 known to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*  
19 *§ 25249.8.* The list, which the Governor updates at least once a year, contains over 700 chemicals  
20 and chemical families. Proposition 65 imposes warning requirements and other controls that apply  
21 to Proposition 65-listed chemicals.  
22

23           **15.** All businesses with ten (10) or more employees that operate or sell PRODUCTS in  
24 California must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited  
25 from knowingly discharging Proposition 65-listed chemicals into sources of drinking water (*Health*  
26 *& Safety Code, § 25249.5*) and (2) required to provide “clear and reasonable” warnings before  
27 knowingly and/ or intentionally exposing a person to a proposition 65-listed chemical (*Health &*  
28 *Safety Code, § 25249.6*).

1           **16.** Proposition 65 provides that any person “violating or threatening to violate” the  
2 statute may be enjoined in a court of competent jurisdiction. *Health & Safety Code § 25249.7.*  
3 “Threaten to violate” means “to create a condition in which there is a substantial probability that a  
4 violation will occur.” *Id.*, § 25249.11 (e). Defendants are also liable for civil penalties of up to  
5 \$2,500.00 per day per violation, recoverable in a civil action. *Id.*, § 25249.7 (b).  
6

7           **17.** Plaintiff identified certain practices of manufacturers or distributors of SAPPORO  
8 ICHIBAN NOODLES, who both in the past and presently, knowingly and intentionally expose  
9 persons in California to LEAD (“LEAD”) in such PRODUCTS without first providing clear and  
10 reasonable warnings of such to the exposed persons prior to the time of exposure. Plaintiff later  
11 discerned that Defendants engaged in such practice.

12           **18.** On February 27, 1987, the Governor of California added LEAD to the list of  
13 chemicals known to the State to cause developmental toxicity in the fetus and male and female  
14 reproductive toxicity. *Cal. Code Regs. Tit. 27, §27001 (c).* The Proposition 65 warning  
15 requirements and discharge prohibitions became applicable to LEAD within twenty (20) months  
16 after LEAD was added to the list of chemicals known to cause birth defects and reproductive  
17 toxicity. *Health & Safety Code §§ 25249.9 and 25249.10.*

18           **19.** On October 1, 1992, the Governor of California added LEAD to the list of  
19 chemicals known to the State to cause cancer. *Cal. Code Regs. Tit. 27 §27001(b).* The Proposition  
20 65 warning requirements and discharge prohibitions became applicable to LEAD within twenty  
21 (20) months after LEAD was added to the list of chemicals known to cause cancer. *Health & Safety*  
22 *Code §§ 25249.9 and 25249.10.*

23           **20.** The MADL for Lead as a chemical known to cause reproductive toxicity is 0.5  
24 micrograms per day. (Cal. Code Regs., tit. 27, §25805, subd. (b).) The No Significant Risk Level  
25 for Lead as a carcinogen is 15 micrograms per day. (Cal. Code Regs., tit. 27, §25705, subd. (b).)

26           **21.** The level of exposure to a chemical causing cancer or reproductive toxicity under  
27 Proposition 65 is determined by multiplying the level in question times the reasonably anticipated  
28 rate of exposure for an individual to a given medium. *27 C.C.R. § 25821(b).* For exposure to

1 consumer PRODUCTS, the level of exposure is calculated using the reasonably anticipated rate of  
2 intake or exposure for average users of the consumer PRODUCT. *27 C.C.R. § 25821(C)(2)*.

3 **22.** Defendants manufacture and distribute SAPPORO ICHIBAN NOODLES, which  
4 contain sufficient quantities of LEAD such that consumers, including pregnant women, who  
5 consume the PRODUCTS are exposed to LEAD. The primary route of exposure for the violations  
6 happens when consumers ingest the PRODUCTS orally. These exposures occur in homes,  
7 workplaces and everywhere in California where the PRODUCTS are used.  
8

9 **23.** During the relevant one-year period herein, no clear and reasonable warning was  
10 provided to consumers when the PRODUCTS were manufactured and released into the stream of  
11 commerce to warn consumers about the possible exposure to cancer from LEAD when the  
12 PRODUCTS are consumed.

13 **NOTICE OF VIOLATION**

14 **24.** At all times relevant to this action, the Defendants have knowingly and intentionally  
15 exposed the users/consumers of the PRODUCTS to LEAD by recommending that consumers  
16 ingest the PRODUCTS without first giving a clear and reasonable warning to such individuals.

17 **25.** The Defendants have sold the PRODUCTS to consumers in California at least since  
18 January 10, 2021. The PRODUCTS continue to be imported, distributed, and sold in California  
19 without the requisite warning information. Consumers are exposed to LEAD when the  
20 PRODUCTS are ingested.

21 **26.** On or about January 10, 2022, Plaintiff gave notice (“Notice”) of the alleged  
22 violations of *Health & Safety Code §25249.6* for the PRODUCTS to Defendants, the California  
23 Attorney General, the District Attorney for each county in California, and the City Attorney for San  
24 Francisco, San Diego, San Jose, Sacramento, and Los Angeles. In compliance with *Health and*  
25 *Safety Code §25249.7(d)* and *27 C.C.R. Code §25903(b)*, each Notice included the following  
26 information: the name, address, and telephone of the noticing party; the name of the alleged  
27 violator; the statute violated; the approximate time period during which violations occurred; and  
28 descriptions of the violations including the chemicals involved, the routes of toxic exposure, and

1 the specific PRODUCT or type of PRODUCT causing the violations.

2           **27.** Before sending the Notice of alleged violations, Plaintiff investigated the  
3 PRODUCTS to determine the likelihood that such PRODUCTS would cause consumers to sustain  
4 significant exposures to LEAD. Plaintiff hired a well-respected and accredited testing laboratory to  
5 test the PRODUCTS. This laboratory uses testing protocols established and approved by the  
6 California Attorney General. Plaintiff further consulted with a well-respected and licensed  
7 toxicologist expert to evaluate the exposure to LEAD when the PRODUCTS are used.  
8

9           **28.** Plaintiff also sent a Certificate of Merit for each Notice to the California Attorney  
10 General, the District Attorneys of every county in California, the City Attorneys of every city in  
11 California with a population greater than 750,000 and to the named Defendants. In compliance with  
12 *Health & Safety Code* § 2521-9.7(d) and *11 C.C.R. § 3101*, each Certificate certified that Plaintiffs’  
13 counsel: (1) has consulted with one or more persons with relevant and appropriate experience or  
14 expertise who reviewed facts, studies or other data regarding the exposures to LEAD alleged in  
15 each Notice; and (2) based on the information obtained through such consultations, believes that  
16 there is a reasonable and meritorious case for a citizen enforcement action based on the facts  
17 alleged in each Notice.

18           **29.** In reliance on the expert’s evaluation of the PRODUCTS, Plaintiffs’ counsel is  
19 informed and believes and thereon alleges that there is a reasonable and meritorious case against  
20 Defendants for this private action.

21           **30.** Any person acting in the public interest has standing to enforce violations of  
22 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid  
23 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action  
24 within such time. *Health & Safety Code* § 25249.7(d)

25           **31.** Plaintiff’s notice of alleged violations also included a Certificate of Service and a  
26 document entitled “The Safe Drinking Water & Toxic Enforcement Act of 1986: A Summary”  
27 *Health & Safety Code* § 25249.7(d)

28           **32.** Plaintiff is commencing this action more than sixty (60) days from the date Plaintiff

1 gave notice of the alleged violations to Defendants and the public prosecutor outlined above.

2           **33.** Plaintiff is informed, believes and thereon alleges that none of the public  
3 prosecutors with the authority to prosecute violations of Proposition 65 has commenced or is  
4 diligently prosecuting an action against the Defendants under *Health and Safety Code section*  
5 *25249.5, et seq.* based on the allegations herein.

6           **34.** Plaintiff has engaged in good faith efforts to resolve the alleged violation prior to  
7 filing this Complaint.  
8

9                                 **FIRST CAUSE OF ACTION**

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

12                                 **SAPPORO ICHIBAN NOODLES**

13           **35.** Plaintiff incorporates by reference paragraphs 1 through 34 of this Complaint as  
14 though fully set forth herein.

15           **36.** Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
16 importer, distributor, wholesaler, promoter, or retailer of the PRODUCTS.

17           **37.** The PRODUCTS contain LEAD.

18           **38.** Defendants knew or should have known that LEAD has been identified by the State  
19 of California as chemicals known to cause cancer and were therefore subject to Proposition 65  
20 warnings requirement. Defendants were also informed of the presence of LEAD in PRODUCTS  
21 and the Proposition 65 violations when Plaintiff served Notice of Violation to Defendants on  
22 December 17, 2021.

23           **39.** The allegations surrounding the PRODUCTS involves “[c]onsumer PRODUCTS  
24 exposure[s]” which “is an exposure that results from a person’s acquisition, purchase, storage,  
25 consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results  
26 from receiving a consumer service.” *Cal. Code Regs. Tit.27 § 25602 (b)*. The PRODUCTS are  
27 consumer PRODUCTS, and as mentioned herein, exposures to LEAD took place as a result of such  
28



1 normal and foreseeable consumption and use.

2           **40.** Plaintiff is informed, believes, and thereon alleges that at least since January 10,  
3 2021, and the present, each of the Defendants knowingly and intentionally exposed California  
4 consumers and users of PRODUCTS to LEAD. Plaintiff is informed, believes, and thereon alleges  
5 that Defendants manufactured, distributed, or sold the PRODUCTS without first providing any  
6 type of clear and reasonable warning of such to the exposed persons before the time of exposure.  
7 Defendants know and intend that California consumers will use and consume the PRODUCTS,  
8 thereby exposing them to LEAD. Therefore, Defendants violated Proposition 65.  
9

10           **41.** The primary exposure to the LEAD found in the PRODUCTS comes from dermal  
11 contact, as well as direct and indirect ingestion of the PRODUCTS. Persons sustain exposures by  
12 eating and consuming the PRODUCTS and handling the PRODUCTS without wearing gloves or  
13 any other personal equipment, or by touching bare skin or mucus membrane with after handling the  
14 PRODUCTS, as well as through direct and indirect hand to mouth contact, hand to mucous  
15 membrane, or breathing in particulate matter dispersed from the PRODCUTS.  
16

17           **42.** Plaintiff is informed, believes and thereon alleges that each of the Defendants'  
18 violations of Proposition 65 as to the PRODUCTS has been ongoing and continuous, as Defendants  
19 engaged and continue to engage in conduct which violates *Health and Safety Code § 25249.6*,  
20 including the manufacture, distribution, promotion and sale of the PRODUCTS, so that a separate  
21 and distinct violation of Proposition 65 occurs each time a person is exposed to LEAD by the  
22 PRODUCTS as mentioned herein.

23           **43.** Plaintiff is informed, believes, and thereon alleges that each violation of Proposition  
24 65 mentioned herein is ever continuing. Plaintiff further alleges and believes that the violations  
25 alleged herein will continue to occur into the future.  
26

27           **44.** Based on the allegations herein, Defendants are liable for civil penalties of up to  
28 \$2,500.00 per day per individual exposure to LEAD from the PRODUCTS, pursuant to Health and  
Safety Code §25249.7(b).

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays for relief and judgment against Defendants, as follows:

- 3
- 4 1. That the Court, pursuant to *Health & Safety Code* § 25249.7(b), assess civil penalties
- 5 against the Defendants in the amount of \$2,500.00 per day for each violation of Proposition 65;
- 6 2. An injunctive order, pursuant to *Health and Safety Code* §25249.7(b) and *CCR title*
- 7 *27, §25603 and 25603.1*, compelling Defendants to adopt a compliance program by either (a)
- 8 reformulating the PRODUCTS such that no Proposition 65 warnings are required, or (b) providing
- 9 “clear and reasonable” warnings on the labels of the subject PRODUCTS.
- 10 3. An award of reasonable attorney’s fees and cost; and
- 11
- 12 4. Such other and further relief that the Court may deem just and equitable.
- 13
- 14
- 15

16

17 DATED: September 6, 2022

18 BY: 

19 **LAW OFFICES OF DANIALPOUR &**  
20 **ASSOCIATES**  
21 Davar Danialpour, Esq.  
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