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10 Attorneys for Plaintiff,  
11 CONSUMER ADVOCACY GROUP, INC.

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF ALAMEDA**

14 CONSUMER ADVOCACY GROUP, INC.,  
15 in the public interest,

16 Plaintiff,

17 v.

18 WALMART, INC., a Delaware Corporation;  
19 WAL-MART.COM USA, LLC, a Delaware  
20 Corporation;  
21 ROKFORM, LLC., a California Corporation;  
22 and DOES 1-50,

23 Defendants.

CASE NO. **23CV047269**

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)

24 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges five causes of action  
25 against defendants WALMART, INC., WAL-MART.COM USA, LLC., ROKFORM, LLC,  
26 and DOES 1-50 as follows:

27 **THE PARTIES**

**ELECTRONICALLY FILED**

Superior Court of California,  
County of Alameda

**10/11/2023 at 10:28:57 AM**

By: Milagros Cortez,  
Deputy Clerk

- 1 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an  
2 organization qualified to do business in the State of California. CAG is a person within  
3 the meaning of Health and Safety Code Section 25249.11, subdivision (a). CAG, acting  
4 as a private attorney general, brings this action in the public interest as defined under  
5 Health and Safety Code Section 25249.7, subdivision (d).
- 6 2. Defendant WALMART, INC (“WALMART”) is a Massachusetts Limited Liability  
7 Company qualified to do business in California, and doing business in the State of  
8 California at all relevant times herein.
- 9 3. Defendant WAL-MART.COM USA, LLC (“WALMART.COM”) is a type of business  
10 entity here, qualified to do business and doing business in the State of California at all  
11 relevant times herein.
- 12 4. Defendant ROKFORM LLC (“ROKFORM”) is a type of business entity here, qualified  
13 to do business and doing business in the State of California at all relevant times herein.
- 14 5. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-50,  
15 and therefore sues these defendants by such fictitious names. Plaintiff will amend this  
16 Complaint to allege their true names and capacities when ascertained. Plaintiff is  
17 informed, believes, and thereon alleges that each fictitiously named defendant is  
18 responsible in some manner for the occurrences herein alleged and the damages caused  
19 thereby.
- 20 6. At all times mentioned herein, the term “Defendants” includes WALMART,  
21 WALMART.COM, ROKFORM, and DOES 1-50.
- 22 7. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all  
23 times mentioned herein have conducted business within the State of California.
- 24 8. Upon information and belief, at all times relevant to this action, each of the Defendants,  
25 including DOES 1-50, was an agent, servant, or employee of each of the other  
26 Defendants. In conducting the activities alleged in this Complaint, each of the  
27 Defendants was acting within the course and scope of this agency, service, or  
28

1 employment, and was acting with the consent, permission, and authorization of each of  
2 the other Defendants. All actions of each of the Defendants alleged in this Complaint  
3 were ratified and approved by every other Defendant or their officers or managing  
4 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the  
5 alleged wrongful conduct of each of the other Defendants.

- 6 9. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the  
7 Defendants was a person doing business within the meaning of Health and Safety Code  
8 Section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more  
9 employees at all relevant times.

10 **JURISDICTION**

- 11 10. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article  
12 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except  
13 those given by statute to other trial courts. This Court has jurisdiction over this action  
14 pursuant to Health and Safety Code Section 25249.7, which allows enforcement of  
15 violations of Proposition 65 in any Court of competent jurisdiction.
- 16 11. This Court has jurisdiction over Defendants named herein because Defendants either  
17 reside or are located in this State or are foreign corporations authorized to do business in  
18 California, are registered with the California Secretary of State, or who do sufficient  
19 business in California, have sufficient minimum contacts with California, or otherwise  
20 intentionally avail themselves of the markets within California through their  
21 manufacture, distribution, promotion, marketing, or sale of their products within  
22 California to render the exercise of jurisdiction by the California courts permissible  
23 under traditional notions of fair play and substantial justice.
- 24 12. Venue is proper in the County of Alameda because one or more of the instances of  
25 wrongful conduct occurred, and continues to occur, in the County of Alameda and/or  
26 because Defendants conducted, and continue to conduct, business in the County of  
27 Alameda with respect to the consumer product that is the subject of this action.

1 **BACKGROUND AND PRELIMINARY FACTS**

2 13. In 1986, California voters approved an initiative to address growing concerns about  
3 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to  
4 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,  
5 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
6 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code Sections  
7 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources  
8 from contamination, to allow consumers to make informed choices about the products  
9 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
10 fit.

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

16 15. All businesses with ten (10) or more employees that operate or sell products in California  
17 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited  
18 from knowingly discharging Proposition 65-listed chemicals into sources of drinking  
19 water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and  
20 reasonable” warnings before exposing a person, knowingly and intentionally, to a  
21 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).

22 16. Proposition 65 provides that any person "violating or threatening to violate" the statute  
23 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §  
24 25249.7. "Threaten to violate" means "to create a condition in which there is a  
25 substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).  
26 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,  
27 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

1 17. Plaintiff identified certain practices of manufacturers and distributors of cosmetic bags,  
2 suction cup phone mount, dried seamoss, tool sets, and sardines. of exposing, knowingly  
3 and intentionally, persons in California to Diethyl Hexyl Phthalate and Bis (2-  
4 ehtylhexyl) phthalate, Lead and Lead Compounds, and Cadmium and Cadmium  
5 Compounds of such products without first providing clear and reasonable warnings of  
6 such to the exposed persons prior to the time of exposure. Plaintiff later discerned that  
7 Defendants engaged in such practice.

8 18. On January 1, 1988, the Governor of California added Diethyl Hexyl Phthalate and Bis  
9 (2-ehtylhexyl) phthalate (“DEHP”) to the list of chemicals known to the State to cause  
10 cancer, (*Cal. Code Regs.* tit. 27, § 27001(b)) and on October 24, 2003, the Governor  
11 added DEHP to the list of chemicals known to the State to cause developmental male  
12 reproductive toxicity (*Cal. Code Regs.* tit. 27, § 27001(c)). Pursuant to Health and  
13 Safety Code sections 25249.9 and 25249.10, twenty (20) months after addition of DEHP  
14 to the list of chemicals known to the State to cause reproductive toxicity, DEHP became  
15 fully subject to Proposition 65 warning requirements and discharge prohibitions.

16 19. On October 1, 1992 the Governor of California added Lead and Lead Compounds  
17 (“Lead”) to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit.  
18 27, § 27001(b)). Pursuant to Health and Safety Code Sections 25249.9 and 25249.10,  
19 twenty (20) months after addition of Lead to the list of chemicals known to the State to  
20 cause cancer, Lead became fully subject to Proposition 65 warning requirements and  
21 discharge prohibitions.

22 20. On February 27, 1987, the Governor of California added Lead to the list of chemicals  
23 known to the State to cause developmental and reproductive toxicity (*Cal. Code Regs.*  
24 tit. 27, § 27001(c)). Lead is known to the State to cause developmental, female, and  
25 male reproductive toxicity. Pursuant to Health and Safety Code Sections 25249.9 and  
26 25249.10, twenty (20) months after addition of Lead to the list of chemicals known to  
27  
28

1 the State to cause developmental and reproductive toxicity, Lead became fully subject to  
2 Proposition 65 warning requirements and discharge prohibitions.

3 21. On October 1, 1987 the Governor of California added Cadmium and Cadmium  
4 Compounds (“Cadmium”) to the list of chemicals known to the State to cause cancer  
5 (*Cal. Code Regs. tit. 27, § 27001(b)*). Pursuant to Health and Safety Code Sections  
6 25249.9 and 25249.10, twenty (20) months after addition of Cadmium to the list of  
7 chemicals known to the State to cause cancer, Cadmium became fully subject to  
8 Proposition 65 warning requirements and discharge prohibitions.

9 22. On May 1, 1997, the Governor of California added Cadmium to the list of chemicals  
10 known to the State to cause developmental and reproductive toxicity (*Cal. Code Regs.*  
11 *tit. 27, § 27001(c)*). Cadmium is known to the State to cause developmental, and male  
12 reproductive toxicity. Pursuant to Health and Safety Code Sections 25249.9 and  
13 25249.10, twenty (20) months after addition of Cadmium to the list of chemicals known  
14 to the State to cause developmental and reproductive toxicity, Cadmium became fully  
15 subject to Proposition 65 warning requirements and discharge prohibitions.

16 **SATISFACTION OF PRIOR NOTICE**

17 23. Plaintiff served the following notices for alleged violations of Health and Safety Code  
18 Section 25249.6, concerning consumer products exposures:

- 19 a. On or about September 20, 2022, Plaintiff gave notice of alleged violations of  
20 Health and Safety Code Section 25249.6, concerning consumer products  
21 exposures subject to a private action to WALMART, WALMART.COM, and to  
22 the California Attorney General, County District Attorneys, and City Attorneys  
23 for each city containing a population of at least 750,000 people in whose  
24 jurisdictions the violations allegedly occurred, concerning the Cosmetic Bags.
- 25 b. On or about October 13, 2022, Plaintiff gave notice of alleged violations of  
26 Health and Safety Code Section 25249.6, concerning consumer products  
27 exposures subject to a private action to WALMART, WALMART.COM,

1 ROKFORM, and to the California Attorney General, County District Attorneys,  
2 and City Attorneys for each city containing a population of at least 750,000  
3 people in whose jurisdictions the violations allegedly occurred, concerning the  
4 Suction Cup Phone Mounts.

5 c. On or about February 28, 2023, Plaintiff gave notice of alleged violations of  
6 Health and Safety Code Section 25249.6, concerning consumer products  
7 exposures subject to a private action to WALMART, WALMART.COM, and to  
8 the California Attorney General, County District Attorneys, and City Attorneys  
9 for each city containing a population of at least 750,000 people in whose  
10 jurisdictions the violations allegedly occurred, concerning the Dried Seamoss.

11 d. On or about February 13, 2023, Plaintiff gave notice of alleged violations of  
12 Health and Safety Code Section 25249.6, concerning consumer products  
13 exposures subject to a private action to WALMART, WALMART.COM, and to  
14 the California Attorney General, County District Attorneys, and City Attorneys  
15 for each city containing a population of at least 750,000 people in whose  
16 jurisdictions the violations allegedly occurred, concerning the Tool Sets.

17 e. On or about February 2, 2023, Plaintiff gave notice of alleged violations of  
18 Health and Safety Code Section 25249.6, concerning consumer products  
19 exposures subject to a private action to WALMART, WALMART.COM, and to  
20 the California Attorney General, County District Attorneys, and City Attorneys  
21 for each city containing a population of at least 750,000 people in whose  
22 jurisdictions the violations allegedly occurred, concerning the Sardines.

23 24. Before sending the notice of alleged violations, Plaintiff investigated the consumer  
24 products involved, the likelihood that such products would cause users to suffer  
25 significant exposures to DEHP, Lead, Cadmium, and the corporate structure of each of  
26 the Defendants.

- 1 25. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the  
2 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for  
3 Plaintiff who executed the certificate had consulted with at least one person with relevant  
4 and appropriate expertise who reviewed data regarding the exposures to DEHP, the  
5 subject Proposition 65-listed chemical of this action. Based on that information, the  
6 attorney for Plaintiff who executed the Certificate of Merit believed there was a  
7 reasonable and meritorious case for this private action. The attorney for Plaintiff  
8 attached to the Certificate of Merit served on the Attorney General the confidential  
9 factual information sufficient to establish the basis of the Certificate of Merit.
- 10 26. Plaintiff's notice of alleged violations also included a Certificate of Service and a  
11 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986  
12 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).
- 13 27. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
14 gave notice of the alleged violations to WALMART, WALMART.COM, ROKFORM,  
15 and the public prosecutors referenced in Paragraph 23.
- 16 28. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor  
17 any applicable district attorney or city attorney has commenced and is diligently  
18 prosecuting an action against the Defendants.

19  
20 **FIRST CAUSE OF ACTION**

21 **(By CONSUMER ADVOCACY GROUP, INC. and against WALMART,  
22 WALMART.COM, and DOES 1-10 for Violations of Proposition 65, The Safe  
23 Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§  
24 25249.5, *et seq.*))**

25  
26 **Cosmetic Bags**

- 27 29. Plaintiff repeats and incorporates by reference paragraphs 1 through 28 of this complaint  
28 as though fully set forth herein.
30. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
distributor, promoter, or retailer of Cosmetic Bags ("Cosmetic Bags"), including but not



1 limited or identified as "Kaboer"; "Transparent Waterproof Cosmetic Bag"; "PVC Clear  
2 Vinyl Zippered Makeup Pouch"; "418L-1374"; "BG3387H01".

3 31. Cosmetic Bags contains DEHP.

4 32. Defendants knew or should have known that DEHP has been identified by the State of  
5 California as a chemical known to cause cancer, and reproductive toxicity and therefore  
6 was subject to Proposition 65 warning requirements. Defendants were also informed of  
7 the presence of DEHP in Cosmetic Bags within Plaintiff's notice of alleged violations  
8 further discussed above at Paragraph 23a.

9 33. Plaintiff's allegations regarding Cosmetic Bags concerns "[c]onsumer products  
10 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,  
11 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
12 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*  
13 *25602(b)*. Cosmetic Bags are consumer products, and, as mentioned herein, exposures to  
14 DEHP took place as a result of such normal and foreseeable consumption and use.

15 34. Plaintiff is informed, believes, and thereon alleges that between September 20, 2019 and  
16 the present, each of the Defendants knowingly and intentionally exposed California  
17 consumers and users of Cosmetic Bags, which Defendants manufactured, distributed, or  
18 sold as mentioned above, to DEHP, without first providing any type of clear and  
19 reasonable warning of such to the exposed persons before the time of exposure.  
20 Defendants have distributed and sold Cosmetic Bags in California. Defendants know  
21 and intend that California consumers will use and consume Cosmetic Bags, thereby  
22 exposing them to DEHP. Further, Plaintiff is  
23 informed, believes, and thereon alleges that Defendants are selling Cosmetic Bags under  
24 a brand or trademark that is owned or licensed by the Defendants or an entity affiliated  
25 thereto; have knowingly introduced DEHP into Cosmetic Bags or knowingly caused  
26 DEHP to be created in Cosmetic Bags; have covered, obscured or altered a warning label  
27 that has been affixed to Cosmetic Bags by the manufacturer, producer, packager,  
28

1 importer, supplier or distributor of Cosmetic Bags; have received a notice and warning  
2 materials for exposure from Cosmetic Bags without conspicuously posting or displaying  
3 the warning materials; and/or have actual knowledge of potential exposure to DEHP  
4 from Cosmetic Bags. Defendants thereby violated Proposition 65.

5 35. The principal routes of exposure are through dermal contact, ingestion and inhalation.

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

11 36. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
12 Proposition 65 as to Cosmetic Bags have been ongoing and continuous, as Defendants  
13 engaged and continue to engage in conduct which violates Health and Safety Code  
14 Section 25249.6, including the manufacture, distribution, promotion, and sale of Product,  
15 so that a separate and distinct violation of Proposition 65 occurred each and every time a  
16 person was exposed to DEHP by Cosmetic Bags as mentioned herein.

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

20 38. Based on the allegations herein, Defendants are liable for civil penalties of up to  
21 \$2,500.00 per day per individual exposure to DEHP from Cosmetic Bags, pursuant to  
22 Health and Safety Code Section 25249.7(b).

23 39. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
24 filing this Complaint.

25  
26 **SECOND CAUSE OF ACTION**

27 **(By CONSUMER ADVOCACY GROUP, INC. and against WALMART,  
28 WALMART.COM, ROKFORM, and DOES 11-20 for Violations of Proposition  
65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety  
Code, §§ 25249.5, et seq.*))**

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COMPLAINT FOR VIOLATION OF PROPOSITION 65, THE SAFE DRINKING WATER AND TOXIC  
ENFORCEMENT ACT OF 1986 (HEALTH AND SAFETY CODE § 25249.5, ET SEQ.)

**Car Accessories**

1  
2 40. Plaintiff repeats and incorporates by reference paragraphs 1 through 39 of this complaint  
3 as though fully set forth herein.

4 41. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
5 distributor, promoter, or retailer of Suction Cup Phone Mount with PVC Components  
6 (“Suction Cup”), including but not limited or identified as "Rokform"; "Premium  
7 Suction Phone Mount with Twist Lock"; "Made in China"; "333501"; "UPC 8 17667  
8 01274 7".

9 42. Suction Cup contains DEHP.

10 43. Defendants knew or should have known that DEHP has been identified by the State of  
11 California as a chemical known to cause cancer, and reproductive toxicity and therefore  
12 was subject to Proposition 65 warning requirements. Defendants were also informed of  
13 the presence of DEHP in Suction Cup within Plaintiff's notice of alleged violations  
14 further discussed above at Paragraph 23b.

15 44. Plaintiff's allegations regarding Product concerns “[c]onsumer products exposure[s],”  
16 which “is an exposure that results from a person’s acquisition, purchase, storage,  
17 consumption, or other reasonably foreseeable use of a consumer good, or any exposure  
18 that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, § 25602(b)*.  
19 Suction Cup are consumer products, and, as mentioned herein, exposures to DEHP took  
20 place as a result of such normal and foreseeable consumption and use.

21 45. Plaintiff is informed, believes, and thereon alleges that between October 13, 2019 and  
22 the present, each of the Defendants knowingly and intentionally exposed California  
23 consumers and users of Suction Cup, which Defendants manufactured, distributed, or  
24 sold as mentioned above, to DEHP, without first providing any type of clear and  
25 reasonable warning of such to the exposed persons before the time of exposure.  
26 Defendants have distributed and sold Suction Cup in California. Defendants know and  
27 intend that California consumers will use and consume Suction Cup, thereby exposing  
28

1 them to DEHP. Further, Plaintiff is informed, believes, and thereon alleges that  
2 Defendants are selling Suction Cup under a brand or trademark that is owned or licensed  
3 by the Defendants or an entity affiliated thereto; have knowingly introduced DEHP into  
4 Suction Cup or knowingly caused DEHP to be created in Suction Cup; have covered,  
5 obscured or altered a warning label that has been affixed to Suction Cup by the  
6 manufacturer, producer, packager, importer, supplier or distributor of Suction Cup; have  
7 received a notice and warning materials for exposure from Suction Cup without  
8 conspicuously posting or displaying the warning materials; and/or have actual  
9 knowledge of potential exposure to DEHP from Suction Cup. Defendants thereby  
10 violated Proposition 65.

11 46. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
12 Persons sustain exposures by handling Suction Cup without wearing gloves or any other  
13 personal protective equipment, or by touching bare skin or mucous membranes with  
14 gloves after handling Suction Cup, as well as through direct and indirect hand to mouth  
15 contact, hand to mucous membrane, or breathing in particulate matter dispersed from  
16 Suction Cup.

17 47. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
18 Proposition 65 as to Suction Cup have been ongoing and continuous, as Defendants  
19 engaged and continue to engage in conduct which violates Health and Safety Code  
20 Section 25249.6, including the manufacture, distribution, promotion, and sale of Suction  
21 Cup, so that a separate and distinct violation of Proposition 65 occurred each and every  
22 time a person was exposed to DEHP by Suction Cup as mentioned herein.

23 48. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
24 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
25 violations alleged herein will continue to occur into the future.  
26  
27  
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1 49. Based on the allegations herein, Defendants are liable for civil penalties of up to  
2 \$2,500.00 per day per individual exposure to DEHP from Suction Cup, pursuant to  
3 Health and Safety Code Section 25249.7(b).

4 50. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
5 filing this Complaint.

6  
7  
8 **THIRD CAUSE OF ACTION**

9 **(By CONSUMER ADVOCACY GROUP, INC. and against WALMART,**  
10 **WALMART.COM, and DOES 21-30 for Violations of Proposition 65, The Safe**  
11 **Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§***  
12 **25249.5, *et seq.*))**

13 **Dried Seafood**

14 51. Plaintiff repeats and incorporates by reference paragraphs 1 through 25 of this complaint  
15 as though fully set forth herein.

16 52. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
17 distributor, promoter, or retailer of Dried Seamoss (“Dried Seamoss”), including but not  
18 limited or identified as “NatureGoGo”; “Dried Seamoss”; “Irish Moss”; “Net Wt. 230g”;  
19 “Exp: 05/2023”; “Distributed by: Nature & Herbs”; “UPC 6 13464 76422 9”.

20 53. Dried Seamoss contains Lead.

21 54. Defendants knew or should have known that relevant chemical has been identified by the  
22 State of California as a chemical known to cause cancer, and reproductive toxicity (may  
23 only be one or the other depending on chemical) and therefore was subject to Proposition  
24 65 warning requirements. Defendants were also informed of the presence of relevant  
25 chemical in Dried Seamoss within Plaintiff’s notice of alleged violations further  
26 discussed above at Paragraph 23c.

27 55. Plaintiff’s allegations regarding Dried Seamoss concerns “[c]onsumer products  
28 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,  
storage, consumption, or other reasonably foreseeable use of a consumer good, or any

1 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*  
2 25602(b). Dried Seamoss are consumer products, and, as mentioned herein, exposures to  
3 Lead took place as a result of such normal and foreseeable consumption and use.

4 56. Plaintiff is informed, believes, and thereon alleges that between February 28, 2020 and  
5 the present, each of the Defendants knowingly and intentionally exposed California  
6 consumers and users of Dried Seamoss, which Defendants manufactured, distributed, or  
7 sold as mentioned above, to Lead, without first providing any type of clear and  
8 reasonable warning of such to the exposed persons before the time of exposure.  
9 Defendants have distributed and sold Dried Seamoss in California. Defendants know  
10 and intend that California consumers will use and consume Dried Seamoss, thereby  
11 exposing them to Lead. Further, Plaintiff is informed, believes, and thereon alleges that  
12 Defendants are selling Dried Seamoss under a brand or trademark that is owned or  
13 licensed by the Defendants or an entity affiliated thereto; have knowingly introduced  
14 Lead into Dried Seamoss or knowingly caused Lead to be created in Dried Seamoss;  
15 have covered, obscured or altered a warning label that has been affixed to Dried Seamoss  
16 by the manufacturer, producer, packager, importer, supplier or distributor of Dried  
17 Seamoss; have received a notice and warning materials for exposure from Dried  
18 Seamoss without conspicuously posting or displaying the warning materials; and/or have  
19 actual knowledge of potential exposure to Lead from Dried Seamoss. Defendants  
20 thereby violated Proposition 65.

21 57. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
22 Persons sustain exposures by handling Dried Seamoss without wearing gloves or any  
23 other personal protective equipment, or by touching bare skin or mucous membranes  
24 with gloves after handling Dried Seamoss, as well as through direct and indirect hand to  
25 mouth contact, hand to mucous membrane, or breathing in particulate matter dispersed  
26 from Dried Seamoss.

1 58. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
2 Proposition 65 as to Dried Seamoss have been ongoing and continuous, as Defendants  
3 engaged and continue to engage in conduct which violates Health and Safety Code  
4 Section 25249.6, including the manufacture, distribution, promotion, and sale of Dried  
5 Seamoss, so that a separate and distinct violation of Proposition 65 occurred each and  
6 every time a person was exposed to Lead by Dried Seamoss as mentioned herein.

7 59. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
8 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
9 violations alleged herein will continue to occur into the future.

10 60. Based on the allegations herein, Defendants are liable for civil penalties of up to  
11 \$2,500.00 per day per individual exposure to Lead from Dried Seamoss, pursuant to  
12 Health and Safety Code Section 25249.7(b).

13 61. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
14 filing this Complaint.

15 **FOURTH CAUSE OF ACTION**

16 **(By CONSUMER ADVOCACY GROUP, INC. and against WALMART,**  
17 **WALMART.COM, and DOES 31-40 for Violations of Proposition 65, The Safe**  
18 **Drinking Water and Toxic Enforcement Act of 1986 (Health & Safety Code, §§**  
19 **25249.5, et seq.))**

20 **Handheld Tools**

21 62. Plaintiff repeats and incorporates by reference paragraphs 1 through 25 of this complaint  
22 as though fully set forth herein.

23 63. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
24 distributor, promoter, or retailer of Tool Sets ("Tool Sets"), including but not limited or  
25 identified as "Cala"; "Tool Set"; "KDE8TS"; "Set Includes: 1pc 6" Slip Joint Pliers with  
26 Double Coated Grip"; "1pc Stubby Bit Driver with 6pc Bits in Cap"; "Imported By: Cala  
27 Industries"; "Made in China"; "UPC 0 810005 020169".

28 64. Tool Sets contains DEHP.

1 65. Defendants knew or should have known that DEHP has been identified by the State of  
2 California as a chemical known to cause cancer, and reproductive toxicity (may only be  
3 one or the other depending on chemical) and therefore was subject to Proposition 65  
4 warning requirements. Defendants were also informed of the presence of DEHP in Tool  
5 Sets within Plaintiff's notice of alleged violations further discussed above at Paragraph  
6 23d.

7 66. Plaintiff's allegations regarding Tool Sets concerns "[c]onsumer products exposure[s],"  
8 which "is an exposure that results from a person's acquisition, purchase, storage,  
9 consumption, or other reasonably foreseeable use of a consumer good, or any exposure  
10 that results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*.  
11 Tool Sets are consumer products, and, as mentioned herein, exposures to DEHP took  
12 place as a result of such normal and foreseeable consumption and use.

13 67. Plaintiff is informed, believes, and thereon alleges that between February 13, 2020 and  
14 the present, each of the Defendants knowingly and intentionally exposed California  
15 consumers and users of Tool Sets, which Defendants manufactured, distributed, or sold  
16 as mentioned above, to DEHP, without first providing any type of clear and reasonable  
17 warning of such to the exposed persons before the time of exposure. Defendants have  
18 distributed and sold Tool Sets in California. Defendants know and intend that California  
19 consumers will use and consume Tool Sets, thereby exposing them to DEHP. Further,  
20 Plaintiff is

21 informed, believes, and thereon alleges that Defendants are selling Tool Sets under a  
22 brand or trademark that is owned or licensed by the Defendants or an entity affiliated  
23 thereto; have knowingly introduced DEHP into Tool Sets or knowingly caused DEHP to  
24 be created in Tool Sets; have covered, obscured or altered a warning label that has been  
25 affixed to Tool Sets by the manufacturer, producer, packager, importer, supplier or  
26 distributor of Tool Sets; have received a notice and warning materials for exposure from  
27 Tool Sets without conspicuously posting or displaying the warning materials; and/or  
28



1 have actual knowledge of potential exposure to DEHP from Tool Sets. Defendants  
2 thereby violated Proposition 65.

3 68. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
4 Persons sustain exposures by handling Tool Sets without wearing gloves or any other  
5 personal protective equipment, or by touching bare skin or mucous membranes with  
6 gloves after handling Tool Sets, as well as through direct and indirect hand to mouth  
7 contact, hand to mucous membrane, or breathing in particulate matter dispersed from  
8 Tool Sets.

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

15 70. 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 71. Based on the allegations herein, Defendants are liable for civil penalties of up to  
19 \$2,500.00 per day per individual exposure to DEHP from Tool Sets, pursuant to Health  
20 and Safety Code Section 25249.7(b).

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

23 **FIFTH CAUSE OF ACTION**

24 **(By CONSUMER ADVOCACY GROUP, INC. and against WALMART,**  
25 **WALMART.COM, and DOES 41-50 for Violations of Proposition 65, The Safe**  
26 **Drinking Water and Toxic Enforcement Act of 1986 (Health & Safety Code, §§**  
27 **25249.5, et seq.))**

28 **Canned Seafood**

1 73. Plaintiff repeats and incorporates by reference paragraphs 1 through 25 of this complaint  
2 as though fully set forth herein.

3 74. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
4 distributor, promoter, or retailer of Sardines (“Sardines”), including but not limited or  
5 identified as “555®”; “Hot Sardines”; “In Tomato Sauce”; “Net Wt. 5.5 oz (155 g)”;  
6 “Manufactured By Century Pacific Food, Inc.”; “Product of Philippines”;  
7 “CHTIN0785”; “BBE NOV 2023”; “CPG180”; “UPC 7 48485 20002 6”.

8 75. Sardines contains Cadmium.

9 76. Defendants knew or should have known that relevant chemical has been identified by the  
10 State of California as a chemical known to cause cancer, and reproductive toxicity (may  
11 only be one or the other depending on chemical) and therefore was subject to Proposition  
12 65 warning requirements. Defendants were also informed of the presence of Cadmium  
13 in Sardines within Plaintiff’s notice of alleged violations further discussed above at  
14 Paragraph 23e.

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

21 78. Plaintiff is informed, believes, and thereon alleges that between February 2, 2020 and the  
22 present, each of the Defendants knowingly and intentionally exposed California  
23 consumers and users of Sardines, which Defendants manufactured, distributed, or sold as  
24 mentioned above, to Cadmium, without first providing any type of clear and reasonable  
25 warning of such to the exposed persons before the time of exposure. Defendants have  
26 distributed and sold Sardines in California. Defendants know and intend that California  
27 consumers will use and consume Sardines, thereby exposing them to Cadmium. Further,  
28

1 Plaintiff is informed, believes, and thereon alleges that Defendants are selling Sardines  
2 under a brand or trademark that is owned or licensed by the Defendants or an entity  
3 affiliated thereto; have knowingly introduced Cadmium into Sardines or knowingly  
4 caused Cadmium to be created in Sardines; have covered, obscured or altered a warning  
5 label that has been affixed to Sardines by the manufacturer, producer, packager,  
6 importer, supplier or distributor of Sardines; have received a notice and warning  
7 materials for exposure from Sardines without conspicuously posting or displaying the  
8 warning materials; and/or have actual knowledge of potential exposure to Cadmium  
9 from Sardines. Defendants thereby violated Proposition 65.

10 79. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
11 Persons sustain exposures by handling Sardines without wearing gloves or any other  
12 personal protective equipment, or by touching bare skin or mucous membranes with  
13 gloves after handling Sardines, as well as through direct and indirect hand to mouth  
14 contact, hand to mucous membrane, or breathing in particulate matter dispersed from  
15 Sardines.

16 80. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
17 Proposition 65 as to Sardines have been ongoing and continuous, as Defendants engaged  
18 and continue to engage in conduct which violates Health and Safety Code Section  
19 25249.6, including the manufacture, distribution, promotion, and sale of Product, so that  
20 a separate and distinct violation of Proposition 65 occurred each and every time a person  
21 was exposed to Cadmium by Sardines as mentioned herein.

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

25 82. Based on the allegations herein, Defendants are liable for civil penalties of up to  
26 \$2,500.00 per day per individual exposure to Cadmium from Sardines, pursuant to  
27 Health and Safety Code Section 25249.7(b).

28

1 83. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
2 filing this Complaint.

3 **PRAYER FOR RELIEF**

4 Plaintiff demands against each of the Defendants as follows:

- 5 1. A permanent injunction mandating Proposition 65-compliant warnings;  
6 2. Penalties pursuant to Health and Safety Code Section 25249.7, subdivision (b);  
7 3. Costs of suit;  
8 4. Reasonable attorney fees and costs; and  
9 5. Any further relief that the court may deem just and equitable.

10  
11 Dated: October 11, 2023

YEROUSHALMI & YEROUSHALMI\*

12  
13  
14 /s/ Reuben Yeroushalmi

15 Reuben Yeroushalmi  
16 Attorneys for Plaintiff,  
17 CONSUMER ADVOCACY GROUP, INC.  
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