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8 Attorneys for Plaintiff,  
9 CONSUMER ADVOCACY GROUP, INC.

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12  
13 **COUNTY OF LOS ANGELES**

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

16 Plaintiff,

17 v.

18 FORTUNE COMMODITIES  
19 CORPORATION DBA SEAFOOD CITY  
20 SUPERMARKET AND A&B AZUSA,  
21 INC., a California Corporation;  
22 and DOES 1-10,

23 Defendants.

CASE NO. **24STCV30432**

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 \$35,000)

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25  
26 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges one cause of action against  
27 defendants FORTUNE COMMODITIES CORPORATION DBA SEAFOOD CITY  
28 SUPERMARKET AND A&B AZUSA, INC. and DOES 1-10 as follows:

**THE PARTIES**

1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an organization qualified to do business in the State of California. CAG is a person within the meaning of Health and Safety Code Section 25249.11, subdivision (a). CAG, acting as a private attorney general, brings this action in the public interest as defined under Health and Safety Code Section 25249.7, subdivision (d).
2. Defendant FORTUNE COMMODITIES CORPORATION DBA SEAFOOD CITY SUPERMARKET AND A&B AZUSA, INC. (“FORTUNE”) is a California Corporation, qualified to do business in California, and doing business in the State of California at all relevant times herein.
3. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-10, and therefore sues these defendants by such fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed, believes, and thereon alleges that each fictitiously named defendant is responsible in some manner for the occurrences herein alleged and the damages caused thereby.
4. At all times mentioned herein, the term “Defendants” includes FORTUNE, and DOES 1-10.
5. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all times mentioned herein have conducted business within the State of California.
6. Upon information and belief, at all times relevant to this action, each of the Defendants, including DOES 1-10, was an agent, servant, or employee of each of the other Defendants. In conducting the activities alleged in this Complaint, each of the Defendants was acting within the course and scope of this agency, service, or employment, and was acting with the consent, permission, and authorization of each of the other Defendants. All actions of each of the Defendants alleged in this Complaint were ratified and approved by every other Defendant or their officers or managing

1 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the  
2 alleged wrongful conduct of each of the other Defendants.

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

7 **JURISDICTION**

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

25 **BACKGROUND AND PRELIMINARY FACTS**

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

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

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

19 14. Proposition 65 provides that any person "violating or threatening to violate" the statute  
20 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §  
21 25249.7. "Threaten to violate" means "to create a condition in which there is a  
22 substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).  
23 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,  
24 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

25 15. Plaintiff identified certain practices of manufacturers and distributors of Spanish and  
26 Portuguese Style Sardines of exposing, knowingly and intentionally, persons in  
27 California to Cadmium and Cadmium Compounds of such products without first  
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1 providing clear and reasonable warnings of such to the exposed persons prior to the time  
2 of exposure. Plaintiff later discerned that Defendants engaged in such practice.

3 16. 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 17. 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 18. 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 October 3, 2023, 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 FORTUNE, and to the California  
22 Attorney General, County District Attorneys, and City Attorneys for each city  
23 containing a population of at least 750,000 people in whose jurisdictions the  
24 violations allegedly occurred, concerning the Spanish and Portuguese Style  
25 Sardines.

26 b. On or about April 22, 2024, Plaintiff gave notice of alleged violations of Health  
27 and Safety Code Section 25249.6, concerning consumer products exposures  
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1 subject to a private action to FORTUNE, and to the California Attorney General,  
2 County District Attorneys, and City Attorneys for each city containing a  
3 population of at least 750,000 people in whose jurisdictions the violations  
4 allegedly occurred, concerning the Spanish and Portuguese Style Sardines.

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

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

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

20 22. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
21 gave notice of the alleged violations to FORTUNE and the public prosecutors referenced  
22 in Paragraph 18.

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

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1 **FIRST CAUSE OF ACTION**

2 **(By CONSUMER ADVOCACY GROUP, INC. and against FORTUNE, and**  
3 **DOES 1-10 for Violations of Proposition 65, The Safe Drinking Water and Toxic**  
4 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

5 **Seafood Products)**

6 24. Plaintiff repeats and incorporates by reference paragraphs 1 through 23 of this complaint  
7 as though fully set forth herein.

8 25. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
9 distributor, promoter, or retailer of Spanish and Portuguese Style Sardines (“Sardines”),  
10 including but not limited to

11 a. “Z”; “Zaragoza”; “Hot”; “Spanish Style Sardines in Tomato Sauce & Corn Oil”;  
12 “Net Wt. 220 g (7.76 oz)”; “Manufactured By: Zaragoza Foods Corporation”;  
13 “Product of the Philippines”; “Distributed By: PerMonte U.S.A Corporation”;  
14 “Exp: Mar.12 2025”; “Lot No: LT0322P12”; “UPC 4806517410037”

15 b. “Z”; “Zaragoza”; “Hot”; “Portuguese Style Sardines in Corn Oil”; “Net Wt. 220  
16 g (7.76oz)”; “Manufactured By: Zaragoza Foods Corporation”; “Product of the  
17 Philippines”; “Distributed By: PerMonte U.S.A Corporation”; “Exp: Feb. 09  
18 2025”; “Lot No: LT0222P15”; “UPC 4806517410112”

19 26. Sardines contain Cadmium.

20 27. Defendants knew or should have known that Cadmium has been identified by the State  
21 of California as a chemical known to cause cancer, developmental, and reproductive  
22 toxicity and therefore was subject to Proposition 65 warning requirements. Defendants  
23 were also informed of the presence of Cadmium in Sardines within Plaintiff’s notice of  
24 alleged violations further discussed above at Paragraph 18a and 18b.

25 28. Plaintiff’s allegations regarding Sardines concerns “[c]onsumer products exposure[s],”  
26 which “is an exposure that results from a person’s acquisition, purchase, storage,  
27 consumption, or other reasonably foreseeable use of a consumer good, or any exposure  
28 that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, § 25602(b).*

1 Sardines are consumer products, and, as mentioned herein, exposures to Cadmium took  
2 place as a result of such normal and foreseeable consumption and use.

3 29. Plaintiff is informed, believes, and thereon alleges that between October 3, 2020 and the  
4 present, each of the Defendants knowingly and intentionally exposed California  
5 consumers and users of Sardines, which Defendants manufactured, distributed, or sold as  
6 mentioned above, to Cadmium, without first providing any type of clear and reasonable  
7 warning of such to the exposed persons before the time of exposure. Defendants have  
8 distributed and sold Sardines in California. Defendants know and intend that California  
9 consumers will use and consume Sardines, thereby exposing them to Cadmium. Further,  
10 Plaintiff is informed, believes, and thereon alleges that Defendants are selling Sardines  
11 under a brand or trademark that is owned or licensed by the Defendants or an entity  
12 affiliated thereto; have knowingly introduced Cadmium into Sardines or knowingly  
13 caused Cadmium to be created in Sardines; have covered, obscured or altered a warning  
14 label that has been affixed to Sardines by the manufacturer, producer, packager,  
15 importer, supplier or distributor of Sardines; have received a notice and warning  
16 materials for exposure from Sardines without conspicuously posting or displaying the  
17 warning materials; and/or have actual knowledge of potential exposure to Cadmium  
18 from Sardines. Defendants thereby violated Proposition 65.

19 30. The principal routes of exposure are through ingestion, especially direct (oral) ingestion.  
20 Persons sustain exposures by eating and consuming Sardines.

21 31. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
22 Proposition 65 as to Sardines have been ongoing and continuous, as Defendants engaged  
23 and continue to engage in conduct which violates Health and Safety Code Section  
24 25249.6, including the manufacture, distribution, promotion, and sale of Sardines, so that  
25 a separate and distinct violation of Proposition 65 occurred each and every time a person  
26 was exposed to Cadmium by Sardines as mentioned herein.

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1 32. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
2 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
3 violations alleged herein will continue to occur into the future.

4 33. Based on the allegations herein, Defendants are liable for civil penalties of up to  
5 \$2,500.00 per day per individual exposure to Cadmium from Sardines, pursuant to  
6 Health and Safety Code Section 25249.7(b).

7 34. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
8 filing this Complaint.

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10 **PRAYER FOR RELIEF**

11 Plaintiff demands against each of the Defendants as follows:

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

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18 Dated: November 18, 2024

YEROUSHALMI & YEROUSHALMI\*

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21 */s/ Reuben Yeroushalmi*  
22 Reuben Yeroushalmi  
23 Attorneys for Plaintiff,  
24 CONSUMER ADVOCACY GROUP, INC.  
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