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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 U.B.C. DISTRIBUTORS, a Michigan
19 Corporation;
20 U.B.C. DISTRIBUTORS CA, INC., a
21 California Corporation;
22 BAA INTERNATIONAL ENTERPRISES,
23 INC. DBA GARDEN FRESH FARMERS
24 MARKET, a California Corporation;
25 and DOES 1-10,

26 Defendants.

CASE NO. **24STCV26627**

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)

27 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges one cause of action against
28 defendants U.B.C. DISTRIBUTORS, U.B.C. DISTRIBUTORS CA, INC., BAA
INTERNATIONAL ENTERPRISES, INC. DBA GARDEN FRESH FARMERS MARKET,
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 U.B.C. DISTRIBUTORS (“U.B.C.”) is a Michigan Corporation, qualified to do business in Michigan, and doing business in the State of California at all relevant times herein.
3. Defendant U.B.C. DISTRIBUTORS CA, INC. (“U.B.C. CA”) is a California Corporation, qualified to do business in California, and doing business in the State of California at all relevant times herein.
4. Defendant BAA INTERNATIONAL ENTERPRISES, INC. DBA GARDEN FRESH FARMERS MARKET (“BAA”) is a California Corporation, qualified to do business in California, and doing business in the State of California at all relevant times herein.
5. 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.
6. At all times mentioned herein, the term “Defendants” includes U.B.C., U.B.C. CA, BAA, and DOES 1-10.
7. 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.
8. 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

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

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

12 **JURISDICTION**

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

3 **BACKGROUND AND PRELIMINARY FACTS**

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

13 14. Proposition 65 requires the Governor of California to publish a list of chemicals known
14 to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*
15 *Code* § 25249.8. The list, which the Governor updates at least once a year, contains over
16 700 chemicals and chemical families. Proposition 65 imposes warning requirements and
17 other controls that apply to Proposition 65-listed chemicals.

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

24 16. Proposition 65 provides that any person "violating or threatening to violate" the statute
25 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §
26 25249.7. "Threaten to violate" means "to create a condition in which there is a
27 substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).

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1 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
2 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

3 17. Plaintiff identified certain practices of manufacturers and distributors of Sardines of
4 exposing, knowingly and intentionally, persons in California to 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 October 1, 1987 the Governor of California added Cadmium and Cadmium
9 Compounds (“Cadmium”) to the list of chemicals known to the State to cause cancer
10 (*Cal. Code Regs.* tit. 27, § 27001(b)). Pursuant to Health and Safety Code Sections
11 25249.9 and 25249.10, twenty (20) months after addition of Cadmium to the list of
12 chemicals known to the State to cause cancer, Cadmium became fully subject to
13 Proposition 65 warning requirements and discharge prohibitions.

14 19. On May 1, 1997, the Governor of California added Cadmium to the list of chemicals
15 known to the State to cause developmental and reproductive toxicity (*Cal. Code Regs.*
16 tit. 27, § 27001(c)). Cadmium is known to the State to cause developmental, and male
17 reproductive toxicity. Pursuant to Health and Safety Code Sections 25249.9 and
18 25249.10, twenty (20) months after addition of Cadmium to the list of chemicals known
19 to the State to cause developmental and reproductive toxicity, Cadmium became fully
20 subject to Proposition 65 warning requirements and discharge prohibitions.

21 **SATISFACTION OF PRIOR NOTICE**

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

- 24 a. On or about December 12, 2023, Plaintiff gave notice of alleged violations of
25 Health and Safety Code Section 25249.6, concerning consumer products
26 exposures subject to a private action to U.B.C., U.B.C. CA, BAA, and to the
27 California Attorney General, County District Attorneys, and City Attorneys for
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1 each city containing a population of at least 750,000 people in whose
2 jurisdictions the violations allegedly occurred, concerning the Sardines.

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

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

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

18 24. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
19 gave notice of the alleged violations to U.B.C., U.B.C. CA, BAA, and the public
20 prosecutors referenced in Paragraph 20.

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

24 **FIRST CAUSE OF ACTION**

25 **(By CONSUMER ADVOCACY GROUP, INC. and against U.B.C., U.B.C. CA,
26 BAA, and DOES 1-10 for Violations of Proposition 65, The Safe Drinking Water
27 and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

28 **Seafood Products**

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

3 27. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
4 distributor, promoter, or retailer of Sardines, including but not limited to the following:
5 (i) “Baraka”; “Sardines”; “Net Wt./Poids Net: 4.4oz (125g)”; “Packed for UBC Food
6 Distributors”; “Product of Morocco”; “BEST BY: 15 NOVEMBER 2024”; “UPC
7 822514247203;” (ii) “Baraka”; “Sardines”; “Net Wt./Poids Net: 4.4oz (125g)”; “Packed
8 for UBC Food Distributors”; “Product of Morocco”; “BEST BY: 15 NOVEMBER
9 2024”; “UPC 822514247258; and (iii) “Baraka”; “Sardines”; “Net Wt./Poids Net: 4.4oz
10 (125g)”; “Packed for UBC Food Distributors”; “Product of Morocco”; “BEST BY
11 SEPTEMBER 15/2024”; “UPC 822514247302”.

12 28. Sardines contain Cadmium.

13 29. Defendants knew or should have known that Cadmium has been identified by the State
14 of California as a chemical known to cause cancer, and reproductive toxicity and
15 therefore was subject to Proposition 65 warning requirements. Defendants were also
16 informed of the presence of Cadmium in Sardines within Plaintiff’s notice of alleged
17 violations further discussed above at Paragraph 20a.

18 30. Plaintiff’s allegations regarding Sardines 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 Sardines 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 31. Plaintiff is informed, believes, and thereon alleges that between December 12, 2020 and
25 the present, each of the Defendants knowingly and intentionally exposed California
26 consumers and users of Sardines, which Defendants manufactured, distributed, or sold as
27 mentioned above, to Cadmium, without first providing any type of clear and reasonable
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1 warning of such to the exposed persons before the time of exposure. Defendants have
2 distributed and sold Sardines in California. Defendants know and intend that California
3 consumers will use and consume Sardines, thereby exposing them to Cadmium. Further,
4 Plaintiff is informed, believes, and thereon alleges that Defendants are selling Sardines
5 under a brand or trademark that is owned or licensed by the Defendants or an entity
6 affiliated thereto; have knowingly introduced Cadmium into Sardines or knowingly
7 caused Cadmium to be created in Sardines; have covered, obscured or altered a warning
8 label that has been affixed to Sardines by the manufacturer, producer, packager,
9 importer, supplier or distributor of Sardines; have received a notice and warning
10 materials for exposure from Sardines without conspicuously posting or displaying the
11 warning materials; and/or have actual knowledge of potential exposure to Cadmium
12 from Sardines. Defendants thereby violated Proposition 65.

13 32. The principal routes of exposure are through ingestion, especially direct (oral) ingestion.
14 Persons sustain exposures by eating and consuming Sardines.

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

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

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

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1 36. 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.

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11 Dated: October 11, 2024

YEROUSHALMI & YEROUSHALMI*

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13 */s/ Reuben Yeroushalmi*

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