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

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8
9 **COUNTY OF LOS ANGELES**

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

13 Plaintiff,

14 v.

15 WILD PLANET FOODS, INC., a Delaware
16 Corporation;
17 NOWHERE PARTNERS LLC, DBA
18 EREWHON, a California Limited Liability
19 Company;
20 GROCERY OUTLET INC., a California
21 Corporation;
22 and DOES 1-20,

23 Defendants.

CASE NO. **24STCV16720**

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)

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25 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges two causes of action
26 against defendants WILD PLANET FOODS, INC.; NOWHERE PARTNERS LLC, DBA
27 EREWHON; GROCERY OUTLET INC., and DOES 1-20 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 WILD PLANET FOODS, INC. (“WILD”) is a Delaware Corporation qualified to do business in California, and doing business in the State of California at all relevant times herein.
3. Defendant NOWHERE PARTNERS LLC, DBA EREWHON (“EREWHON”) is a California Limited Liability Company, qualified to do business in California, and doing business in the State of California at all relevant times herein.
4. Defendant GROCERY OUTLET INC. (“GROCERY”) 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 1-20, 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 WILD, EREWHON, GROCERY, and DOES 1-20.
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 1-20, 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 October 3, 2023 and April 16, 2024, Plaintiff gave notices of
25 alleged violations of Health and Safety Code Section 25249.6, concerning
26 consumer products exposures subject to a private action to WILD, GROCERY,
27 and to the California Attorney General, County District Attorneys, and City

1 Attorneys for each city containing a population of at least 750,000 people in
2 whose jurisdictions the violations allegedly occurred, concerning the Sardines I.

- 3 b. On or about January 5, 2024 and April 16, 2024, Plaintiff gave notices of
4 alleged violations of Health and Safety Code Section 25249.6, concerning
5 consumer products exposures subject to a private action to WILD, EREWHON,
6 and to the California Attorney General, County District Attorneys, and City
7 Attorneys for each city containing a population of at least 750,000 people in
8 whose jurisdictions the violations allegedly occurred, concerning the Sardines II.

- 9 21. Before sending the notice of alleged violations, Plaintiff investigated the consumer
10 products involved, the likelihood that such products would cause users to suffer
11 significant exposures to Cadmium, and the corporate structure of each of the Defendants.
12 22. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
13 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
14 Plaintiff who executed the certificate had consulted with at least one person with relevant
15 and appropriate expertise who reviewed data regarding the exposures to Cadmium, the
16 subject Proposition 65-listed chemical of this action. Based on that information, the
17 attorney for Plaintiff who executed the Certificate of Merit believed there was a
18 reasonable and meritorious case for this private action. The attorney for Plaintiff
19 attached to the Certificate of Merit served on the Attorney General the confidential
20 factual information sufficient to establish the basis of the Certificate of Merit.
21 23. Plaintiff's notice of alleged violations also included a Certificate of Service and a
22 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986
23 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).
24 24. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
25 gave notice of the alleged violations to WILD, EREWHON, GROCERY, and the public
26 prosecutors referenced in Paragraph 20.

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

4 **FIRST CAUSE OF ACTION**

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

8 **Seafood Products I**

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

11 27. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
12 distributor, promoter, or retailer of Sardines I, including but not limited to “Sustainable
13 Seas”; “Sardines”; “In Water”; “Net Wt. 4.25 oz (120 g)”; “Prod: UC190 M.”;
14 “20.07.08”; “Best By: 07.08.2023”; “Produced for Sustainable Seas”; “UPC
15 850348003382”.

16 28. Sardines I contain Cadmium.

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

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

1 31. Plaintiff is informed, believes, and thereon alleges that between October 3, 2020 and the
2 present, each of the Defendants knowingly and intentionally exposed California
3 consumers and users of Sardines I, which Defendants manufactured, distributed, or sold
4 as mentioned above, to Cadmium, without first providing any type of clear and
5 reasonable warning of such to the exposed persons before the time of exposure.

6 Defendants have distributed and sold Sardines I in California. Defendants know and
7 intend that California consumers will use and consume Sardines I, thereby exposing
8 them to Cadmium. Further, Plaintiff is informed, believes, and thereon alleges that
9 Defendants are selling Sardines I under a brand or trademark that is owned or licensed
10 by the Defendants or an entity affiliated thereto; have knowingly introduced Cadmium
11 into Sardines I or knowingly caused Cadmium to be created in Sardines I; have covered,
12 obscured or altered a warning label that has been affixed to Sardines I by the
13 manufacturer, producer, packager, importer, supplier or distributor of Sardines I; have
14 received a notice and warning materials for exposure from Sardines I without
15 conspicuously posting or displaying the warning materials; and/or have actual
16 knowledge of potential exposure to Cadmium from Sardines I. Defendants thereby
17 violated Proposition 65.

18 32. The principal routes of exposure are through ingestion, especially direct (oral) ingestion,
19 inhalation, and trans-dermal absorption. Persons sustain exposures primarily by eating
20 and consuming Sardines I, as well as through direct and indirect hand to mouth contact,
21 hand to mucous membrane, or even breathing in particulate matter dispersed from
22 Sardines I.

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

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

6 35. Based on the allegations herein, Defendants are liable for civil penalties of up to
7 \$2,500.00 per day per individual exposure to Cadmium from Sardines I, pursuant to
8 Health and Safety Code Section 25249.7(b).

9 36. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
10 filing this Complaint.

11 **SECOND CAUSE OF ACTION**

12 **(By CONSUMER ADVOCACY GROUP, INC. and against WILD, EREWHON,**
13 **and DOES 11-20 for Violations of Proposition 65, The Safe Drinking Water and**
14 **Toxic Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

15 **Seafood Products II**

16 37. Plaintiff repeats and incorporates by reference paragraphs 1 through 36 of this complaint
17 as though fully set forth herein.

18 38. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
19 distributor, promoter, or retailer of Sardines II, including but not limited to “Wild
20 Planet”; “WILD SARDINES in Water with Sea Salt”; “SCALE FREE”;
21 “SUSTAINABLY CAUGHT IN THE NORTH PACIFIC”; “NET WT 4.4 OZ (125g)”;
22 “PROD: 03/01/2022”; “BEST BY: 03/01/2025”; “UPC 829696000831”.

23 39. Sardines II contains Cadmium.

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

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

7 42. Plaintiff is informed, believes, and thereon alleges that between January 5, 2021 and the
8 present, each of the Defendants knowingly and intentionally exposed California
9 consumers and users of Sardines II, which Defendants manufactured, distributed, or sold
10 as mentioned above, to Cadmium, without first providing any type of clear and
11 reasonable warning of such to the exposed persons before the time of exposure.
12 Defendants have distributed and sold Sardines II in California. Defendants know and
13 intend that California consumers will use and consume Sardines II, thereby exposing
14 them to Cadmium. Further, Plaintiff is informed, believes, and thereon alleges that
15 Defendants are selling Sardines II under a brand or trademark that is owned or licensed
16 by the Defendants or an entity affiliated thereto; have knowingly introduced Cadmium
17 into Sardines II or knowingly caused Cadmium to be created in Sardines II; have
18 covered, obscured or altered a warning label that has been affixed to Sardines II by the
19 manufacturer, producer, packager, importer, supplier or distributor of Sardines II; have
20 received a notice and warning materials for exposure from Sardines II without
21 conspicuously posting or displaying the warning materials; and/or have actual
22 knowledge of potential exposure to Cadmium from Sardines II. Defendants thereby
23 violated Proposition 65.

24 43. The principal routes of exposure are through ingestion, especially direct (oral) ingestion,
25 inhalation, and trans-dermal absorption. Persons sustain exposures primarily by eating
26 and consuming Sardines II, as well as through direct and indirect hand to mouth contact,
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1 hand to mucous membrane, or even breathing in particulate matter dispersed from
2 Sardines II.

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

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

12 46. Based on the allegations herein, Defendants are liable for civil penalties of up to
13 \$2,500.00 per day per individual exposure to Cadmium from Sardines II, pursuant to
14 Health and Safety Code Section 25249.7(b).

15 47. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
16 filing this Complaint.

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18 **PRAYER FOR RELIEF**

19 Plaintiff demands against each of the Defendants as follows:

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

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26 Dated: July 3, 2024

YEROUSHALMI & YEROUSHALMI*

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/s/ Reuben Yeroushalmi
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Attorneys for Plaintiff,
CONSUMER ADVOCACY GROUP, INC.