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8 Attorneys for Plaintiff,

9 CONSUMER ADVOCACY GROUP, INC.

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF LOS ANGELES**

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

14 Plaintiff,

15 v.

16 SMASH ENTERPRISES (USA), INC., a  
17 California Corporation;  
18 ADIR INTERNATIONAL, LLC DBA  
19 CURACAO, a Delaware Limited Liability  
20 Company;  
21 and DOES 1-10,

22 Defendants.

CASE NO. **25STCV18270**

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)

23  
24  
25 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges one cause of action against  
26 defendants SMASH ENTERPRISES (USA), INC., ADIR INTERNATIONAL, LLC DBA  
27 CURACAO, and DOES 1-10 as follows:  
28

## **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 SMASH ENTERPRISES (USA), INC. (“SMASH”) is a California corporation, qualified to do business in California, and doing business in the State of California at all relevant times herein.
3. Defendant ADIR INTERNATIONAL, LLC DBA CURACAO (“CURACAO”) is a Delaware Limited Liability Company, qualified to do business in California, and doing business in the State of California at all relevant times herein.
4. 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.
5. At all times mentioned herein, the term “Defendants” includes SMASH, CURACAO, and DOES 1-10.
6. 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.
7. 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

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

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

9 **JURISDICTION**

- 10 9. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article  
11 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except  
12 those given by statute to other trial courts. This Court has jurisdiction over this action  
13 pursuant to Health and Safety Code Section 25249.7, which allows enforcement of  
14 violations of Proposition 65 in any Court of competent jurisdiction.
- 15 10. This Court has jurisdiction over Defendants named herein because Defendants either  
16 reside or are located in this State or are foreign corporations authorized to do business in  
17 California, are registered with the California Secretary of State, or who do sufficient  
18 business in California, have sufficient minimum contacts with California, or otherwise  
19 intentionally avail themselves of the markets within California through their  
20 manufacture, distribution, promotion, marketing, or sale of their products within  
21 California to render the exercise of jurisdiction by the California courts permissible  
22 under traditional notions of fair play and substantial justice.
- 23 11. Venue is proper in the County of Los Angeles because one or more of the instances of  
24 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or  
25 because Defendants conducted, and continue to conduct, business in the County of Los  
26 Angeles with respect to the consumer product that is the subject of this action.
- 27  
28

## **BACKGROUND AND PRELIMINARY FACTS**

12. In 1986, California voters approved an initiative to address growing concerns about exposure to toxic chemicals and declared their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp., Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code Sections 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources from contamination, to allow consumers to make informed choices about the products they buy, and to enable persons to protect themselves from toxic chemicals as they see fit.
13. Proposition 65 requires the Governor of California to publish a list of chemicals known to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code* § 25249.8. The list, which the Governor updates at least once a year, contains over 700 chemicals and chemical families. Proposition 65 imposes warning requirements and other controls that apply to Proposition 65-listed chemicals.
14. All businesses with ten (10) or more employees that operate or sell products in California must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited from knowingly discharging Proposition 65-listed chemicals into sources of drinking water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and reasonable” warnings before exposing a person, knowingly and intentionally, to a Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).
15. Proposition 65 provides that any person “violating or threatening to violate” the statute may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7. “Threaten to violate” means “to create a condition in which there is a substantial probability that a violation will occur.” *Health & Safety Code* § 25249.11(e). Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation, recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

1 16. Plaintiff identified certain practices of manufacturers and distributors of Bags of  
2 exposing, knowingly and intentionally, persons in California to Diisononyl Phthalate of  
3 such products without first providing clear and reasonable warnings of such to the  
4 exposed persons prior to the time of exposure. Plaintiff later discerned that Defendants  
5 engaged in such practice.

6 17. On December 20, 2013, the Governor of California added Diisononyl Phthalate  
7 (“DINP”) to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit.  
8 27, § 27001(b)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10,  
9 twenty (20) months after addition of DINP to the list of chemicals known to the State to  
10 cause cancer, DINP became fully subject to Proposition 65 warning requirements and  
11 discharge prohibitions.

12 **SATISFACTION OF PRIOR NOTICE**

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

- 15 a. On or about January 14, 2025, Plaintiff gave notice of alleged violations of  
16 Health and Safety Code Section 25249.6, concerning consumer products  
17 exposures subject to a private action to SMASH, CURACAO, and to the  
18 California Attorney General, County District Attorneys, and City Attorneys for  
19 each city containing a population of at least 750,000 people in whose  
20 jurisdictions the violations allegedly occurred, concerning the Lunch Bags.
- 21 b. On or about January 21, 2025, Plaintiff gave notice of alleged violations of  
22 Health and Safety Code Section 25249.6, concerning consumer products  
23 exposures subject to a private action to SMASH, CURACAO, and to the  
24 California Attorney General, County District Attorneys, and City Attorneys for  
25 each city containing a population of at least 750,000 people in whose  
26 jurisdictions the violations allegedly occurred, concerning the Lunch Bags.

1 19. Before sending the notice of alleged violations, Plaintiff investigated the consumer  
2 products involved, the likelihood that such products would cause users to suffer  
3 significant exposures to DINP, and the corporate structure of each of the Defendants.

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

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

16 22. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
17 gave notice of the alleged violations to SMASH, CURACAO, and the public prosecutors  
18 referenced in Paragraph 18.

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

### 22 **FIRST CAUSE OF ACTION**

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

### 26 **Bags**

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

1 25. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
2 distributor, promoter, or retailer of Lunch Bags, including but not limited to: “smash”;  
3 “Smash Enterprises Pty. Ltd.”; “Item# 24353”; “Ladies Lunch Bag” “Smash USA Inc”;  
4 “UPC 680920003451”

5 26. Lunch Bags contain DINP.

6 27. Defendants knew or should have known that DINP has been identified by the State of  
7 California as a chemical known to cause cancer, and therefore was subject to Proposition  
8 65 warning requirements. Defendants were also informed of the presence of DINP in  
9 Lunch Bags within Plaintiff's notice of alleged violations further discussed above at  
10 Paragraph 18a and 18b.

11 28. Plaintiff's allegations regarding Lunch Bags concerns “[c]onsumer products  
12 exposure[s],” which “is an exposure that results from a person's acquisition, purchase,  
13 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
14 exposure that results from receiving a consumer service.” *Cal. Code Regs.* tit. 27, §  
15 25602(b). Lunch Bags are consumer products, and, as mentioned herein, exposures to  
16 DINP took place as a result of such normal and foreseeable consumption and use.

17 29. Plaintiff is informed, believes, and thereon alleges that between January 14, 2022 and the  
18 present, each of the Defendants knowingly and intentionally exposed California  
19 consumers and users of Lunch Bags, which Defendants manufactured, distributed, or  
20 sold as mentioned above, to DINP, without first providing any type of clear and  
21 reasonable warning of such to the exposed persons before the time of exposure.  
22 Defendants have distributed and sold Lunch Bags in California. Defendants know and  
23 intend that California consumers will use and consume Lunch Bags, thereby exposing  
24 them to DINP. Further, Plaintiff is informed, believes, and thereon alleges that  
25 Defendants are selling Lunch Bags under a brand or trademark that is owned or licensed  
26 by the Defendants or an entity affiliated thereto; have knowingly introduced DINP into  
27 Lunch Bags or knowingly caused DINP to be created in Lunch Bags; have covered,  
28

1 obscured or altered a warning label that has been affixed to Lunch Bags by the  
2 manufacturer, producer, packager, importer, supplier or distributor of Lunch Bags; have  
3 received a notice and warning materials for exposure from Lunch Bags without  
4 conspicuously posting or displaying the warning materials; and/or have actual  
5 knowledge of potential exposure to DINP from Lunch Bags. Defendants thereby  
6 violated Proposition 65.

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

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

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

22 33. Based on the allegations herein, Defendants are liable for civil penalties of up to  
23 \$2,500.00 per day per individual exposure to DINP from Lunch Bags, pursuant to Health  
24 and Safety Code Section 25249.7(b).

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



**PRAYER FOR RELIEF**

Plaintiff demands against each of the Defendants as follows:

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

Dated: June 24, 2025

YEROUSHALMI & YEROUSHALMI\*

/s/ Reuben Yeroushalmi

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