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13 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 FOR THE COUNTY OF SAN FRANCISCO  
15

16 PEOPLE OF THE STATE OF CALIFORNIA, ex rel. BILL LOCKYER, Attorney General of the State of 17 California, 18 19 v. 20 TRI-UNION SEAFOODS, LLC., DEL MONTE CORPORATION, BUMBLE BEE SEAFOODS, LLC, 21 and DOES 1 through 100, 22 23	Case No.:  COMPLAINT FOR CIVIL PENALTY AND INJUNCTIVE RELIEF Business Tort/Unfair Business Practice (07) Toxic Tort/Environmental (30)
Plaintiff,	
Defendants,	

24 **I. INTRODUCTION**

25 1. This complaint seeks an injunction and civil penalties to remedy defendants'  
26 failure to warn consumers that canned and packaged tuna fish products (“Tuna Products”) sold  
27 by defendants expose consumers to chemicals known to the State of California to cause cancer  
28 and reproductive harm. Under the Safe Drinking Water and Toxic Enforcement Act of 1986,

1 Health and Safety Code section 25249.6, also known as "Proposition 65," businesses must  
2 provide persons with a "clear and reasonable warning" before exposing them to such chemicals.

## 3 **II. PARTIES**

4 2. Plaintiffs are the People of the State of California, by and through the Attorney  
5 General of California, Bill Lockyer. Health and Safety Code section 25249.7(c) provides that  
6 actions to enforce Proposition 65 may be brought by the Attorney General in the name of the  
7 People of the State of California. Government Code section 12607 authorizes the Attorney  
8 General to bring an action for equitable relief in the name of the People of the State of California  
9 against any person to protect the natural resources of the State from pollution, impairment, or  
10 destruction. Business and Professions Code section 17200 provides that actions to prohibit  
11 unfair and unlawful business practices may be brought by the Attorney General in the name of  
12 the People of the State of California.

13 3. Defendant Tri-Union Seafoods, LLC is a business entity that distributes and/or  
14 sells Tuna Products to consumers within the State of California.

15 4. Defendant Del Monte Corporation is a business entity that distributes and/or sells  
16 Tuna Products to consumers within the state of California.

17 5. Defendant Bumble Bee Seafoods, LLC is a business entity that distributes and/or  
18 sells Tuna Products to consumers within the state of California.

19 9. The true names and capacities of the defendants sued herein as Does 1 through  
20 100 are unknown to plaintiff, who therefore sues them by such fictitious names. Plaintiff will  
21 amend this complaint to allege the true names and capacities of these defendants when they have  
22 been determined. Each of the fictitiously named defendants is responsible in some manner for  
23 the conduct alleged herein.

## 24 **III. JURISDICTION AND VENUE**

25 10. This Court has jurisdiction pursuant to California Constitution Article VI, section  
26 10, because this case is a cause not given by statute to other trial courts.

27 11. This Court has jurisdiction over the defendants named above because they do  
28 sufficient business in California, or otherwise have sufficient minimum contacts in California to

1 render the exercise of jurisdiction over them by the California courts consistent with traditional  
2 notions of fair play and substantial justice.

3 12. Venue is proper in this Court because the cause arises in the City and County of  
4 San Francisco where some of the violations of law have occurred.

#### 5 **IV. STATUTORY BACKGROUND**

##### 6 **A. Proposition 65**

7 16. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative  
8 statute passed as "Proposition 65" by a vote of the People in November of 1986.

9 17. The warning requirement of Proposition 65 is contained in Health and Safety  
10 Code section 25249.6, which provides:

11 No person in the course of doing business shall knowingly and  
12 intentionally expose any individual to a chemical known to the state to  
13 cause cancer or reproductive toxicity without first giving clear and  
reasonable warning to such individual, except as provided in Section  
25249.10

14 18. Implementing regulations promulgated by the Health and Welfare Agency  
15 provide that the warning method "must be reasonably calculated, considering the alternative  
16 methods available under the circumstances, to make the warning message available to the  
17 individual prior to exposure." (22 CCR § 12601(a).)

18 19. The regulations prescribe certain types of warnings that are considered valid,  
19 including: (A) warnings on labels, (B) identification at the retail outlet through "shelf labeling,  
20 signs, menus, or a combination thereof," and (C) "a system of signs, public advertising  
21 identifying the system and toll-free information services, that provides clear and reasonable  
22 warnings." 22 CCR §§ 12601(b)(1)(A)-(C).

23 20. Proposition 65 also establishes a procedure by which the state is to develop a list  
24 of chemicals "known to the State to cause cancer or reproductive toxicity." Health & Safety  
25 Code section 25249.8. No warning need be given concerning a listed chemical until one year  
26 after the chemical first appears on the list. Id., § 25249.10(b).

27 21. Proposition 65 provides that any person "violating or threatening to violate" the  
28 statute may be enjoined in any court of competent jurisdiction. Health & Safety Code, §

1 25249.7. To "threaten to violate" is defined to mean "to create a condition in which there is a  
2 substantial probability that a violation will occur." Id., § 25249.11(e). In addition, violators are  
3 liable for civil penalties of up to \$2,500 per day for each violation, recoverable in a civil action.  
4 Id., § 25249.7(b). Actions to enforce the law "may be brought by the Attorney General in the  
5 name of the People of the State of California or by any district attorney". Id., § 25249.7(c).

6 **B. The Unfair Competition Act**

7 22. California Business and Professions Code section 17200 provides that "unfair  
8 competition shall mean and include unlawful, unfair or fraudulent business practice." Section  
9 17203 of the Business and Professions Code provides that "(a)ny person performing or  
10 proposing to perform an act of unfair competition within this state may be enjoined in any court  
11 of competent jurisdiction."

12 23. Section 17206(a) provides that any person violating Section 17200 "shall be liable  
13 for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation,  
14 which shall be assessed and recovered in a civil action brought in the name of the people of the  
15 State of California by the Attorney General or by any district attorney." Under section 17205,  
16 these penalties are "cumulative to each other and to the remedies or penalties available under all  
17 other laws of this state."

18 **V. FACTS**

19 24. Methylmercury compounds were listed under Proposition 65 as a chemical known  
20 to the State of California to cause cancer on May 1, 1996. Methyl mercury was listed as a  
21 chemical known to the State of California to cause reproductive toxicity on July 1, 1987.  
22 Mercury and mercury compounds were listed as chemicals known to cause reproductive toxicity  
23 on July 1, 1990. 22 CCR § 12000.

24 25. Defendants sell Tuna Products. The Tuna Products contain mercury and mercury  
25 compounds and methyl mercury and methylmercury compounds, which are ingested by persons  
26 eating the Tuna Products. Each defendant knows or has known since at least July 1, 1988 that  
27 the Tuna Products contain methyl mercury; since May 1, 1997 that the Tuna Products contain  
28 methylmercury compounds; and since July 1, 1991 that the Tuna Products contain mercury and

1 mercury compounds, and that persons eating the Tuna Products are exposed to these chemicals.

2 26. From at least July 1, 1988 to the present, Defendants have failed to provide  
3 consumers of the Tuna Products with a clear and reasonable warning that they are being exposed  
4 to a chemical known to the State of California to cause birth defects or other reproductive harm.

5 27. From at least May 1, 1997 to the present Defendants have failed to provide  
6 consumers of the Tuna Products with a clear and reasonable warning that they are being exposed  
7 to a chemical known to the State of California to cause cancer.

8 **VI. FIRST CAUSE OF ACTION**

9 (For Violation of Proposition 65)

10 28. Paragraphs 1 through 27 are realleged as if fully set forth herein.

11 29. Plaintiffs are informed and believe, and based on such information and belief  
12 allege, that each defendant employs ten or more persons.

13 30. By committing the acts alleged above, each defendant has, in the course of doing  
14 business, knowingly and intentionally exposed individuals to mercury and mercury compounds  
15 and methyl mercury and methylmercury compounds, chemicals known to the state of California  
16 to cause cancer and reproductive toxicity, without first giving clear and reasonable warning to  
17 such individuals, within the meaning of Health and Safety Code section 25249.6.

18 31. Said violations render each defendant liable to plaintiff for civil penalties of up to  
19 \$2,500 per day for each violation.

20 **VII. SECOND CAUSE OF ACTION**

21 (For Unlawful Business Practices)

22 32. Paragraphs 1 through 31 are realleged as if fully set forth herein.

23 33. By committing the acts alleged above, each defendant has engaged in unlawful  
24 business practices which constitute unfair competition within the meaning of Business and  
25 Professions Code section 17200.

26 34. Said violations render each defendant liable to plaintiff for civil penalties of up to  
27 \$2,500 for each violation.

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**PRAYER FOR RELIEF**

WHEREFORE, plaintiffs pray that the Court:

1. Pursuant to the First and Second Causes of Action, grant civil penalties according to proof;
2. Pursuant to Health and Safety Code section 25249.7, and Business and Professions Code sections 17203, enter such preliminary injunctions, permanent injunctions, or other orders prohibiting each defendant from exposing persons within the State of California to mercury and mercury compounds and methyl mercury and methylmercury compounds without providing clear and reasonable warnings, as plaintiffs shall specify in further application to the court;
3. Award plaintiffs their costs of suit;
4. Grant such other and further relief as the court deems just and proper.

Respectfully submitted,

Dated: June 21, 2004

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