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10 Attorneys for Plaintiff,
11 Consumer Advocacy Group, Inc.

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

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

16 Plaintiff,

17 v.

18 WAL-MART STORES, INC., a Delaware
19 Corporation; WAL-MART ASSOCIATES,
20 INC., a Delaware Corporation; WALMART
21 STARCO, LLC, a Delaware Limited
22 Liability Company; WAL-MART STORES
23 EAST, LP, a Delaware Limited Partnership;
24 WAL-MART.COM USA, LLC, a California
25 Limited Liability Company; AMERICAN
26 ROLAND FOOD CORPORATION, a New
27 York Domestic Business Corporation; and
28 DOES 1-20;

Defendants.

CASE NO. **BC 6 5 1 9 0 2**

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)

Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
Defendants WAL-MART STORES, INC., WAL-MART ASSOCIATES, INC., WALMART
STARCO, LLC, WAL-MART STORES EAST, LP, WAL-MART.COM USA, LLC,
AMERICAN ROLAND FOOD CORPORATION, and DOES 1-20 as follows:

CONFIRMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

MAR 01 2017

Sherri R. Carter, Executive Officer/Clerk
By: Cristina Grijalva, Deputy

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 WAL-MART STORES, INC. (“WALMART STORES”) is a Delaware Corporation, doing business in the State of California at all relevant times herein.
3. Defendant WAL-MART ASSOCIATES, INC. (“WALMART ASSOCIATES”) is a Delaware Corporation, doing business in the State of California at all relevant times herein.
4. Defendant WALMART STARCO, LLC (“WALMART STARCO”) is a Delaware Limited Liability Company, doing business in the State of California at all relevant times herein.
5. Defendant WAL-MART STORES EAST, LP (“WALMART EAST”) is a Delaware Limited Partnership, doing business in the State of California at all relevant times herein.
6. Defendant WAL-MART.COM USA, LLC (“WALMART USA”) is a California Limited Liability Company, doing business in the State of California at all relevant times herein.
7. Defendant AMERICAN ROLAND FOOD CORPORATION (“AMERICAN ROLAND”) is a New York Domestic Business Corporation, doing business in the State of California at all relevant times herein.
8. 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

1 responsible in some manner for the occurrences herein alleged and the damages caused
2 thereby.

3 9. At all times mentioned herein, the term "Defendants" includes WALMART STORES,
4 WALMART ASSOCIATES, WALMART STARCO, WALMART EAST, WALMART
5 USA, AMERICAN ROLAND, and DOES 1-20.

6 10. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
7 times mentioned herein have conducted business within the State of California.

8 11. Upon information and belief, at all times relevant to this action, each of the Defendants,
9 including DOES 1-20, was an agent, servant, or employee of each of the other
10 Defendants. In conducting the activities alleged in this Complaint, each of the
11 Defendants was acting within the course and scope of this agency, service, or
12 employment, and was acting with the consent, permission, and authorization of each of
13 the other Defendants. All actions of each of the Defendants alleged in this Complaint
14 were ratified and approved by every other Defendant or their officers or managing
15 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated
16 the alleged wrongful conduct of each of the other Defendants.

17 12. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
18 Defendants was a person doing business within the meaning of Health and Safety Code
19 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more
20 employees at all relevant times.

21 JURISDICTION

22 13. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
23 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
24 those given by statute to other trial courts. This Court has jurisdiction over this action
25 pursuant to Health and Safety Code section 25249.7, which allows enforcement of
26 violations of Proposition 65 in any Court of competent jurisdiction.

27 14. This Court has jurisdiction over Defendants named herein because Defendants either
28 reside or are located in this State or are foreign corporations authorized to do business in

1 California, are registered with the California Secretary of State, or who do sufficient
2 business in California, have sufficient minimum contacts with California, or otherwise
3 intentionally avail themselves of the markets within California through their
4 manufacture, distribution, promotion, marketing, or sale of their products within
5 California to render the exercise of jurisdiction by the California courts permissible
6 under traditional notions of fair play and substantial justice.

7 15. Venue is proper in the County of Los Angeles because one or more of the instances of
8 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
9 because Defendants conducted, and continue to conduct, business in the County of Los
10 Angeles with respect to the consumer product that is the subject of this action.

11 **BACKGROUND AND PRELIMINARY FACTS**

12 16. In 1986, California voters approved an initiative to address growing concerns about
13 exposure to toxic chemicals and declared their right “[t]o be informed about exposures
14 to chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,
15 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
16 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections
17 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources
18 from contamination, to allow consumers to make informed choices about the products
19 they buy, and to enable persons to protect themselves from toxic chemicals as they see
20 fit.

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

26 18. All businesses with ten (10) or more employees that operate or sell products in
27 California must comply with Proposition 65. Under Proposition 65, businesses are: (1)
28 prohibited from knowingly discharging Proposition 65-listed chemicals into sources of

1 drinking water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and
2 reasonable” warnings before exposing a person, knowingly and intentionally, to a
3 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).

4 19. Proposition 65 provides that any person "violating or threatening to violate" the statute
5 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §
6 25249.7. "Threaten to violate" means "to create a condition in which there is a
7 substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).
8 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
9 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

10 20. Plaintiff identified certain practices of manufacturers and distributors of products
11 bearing Lead and Lead Compounds (“LEAD”) of exposing, knowingly and
12 intentionally, persons in California to the Proposition 65-listed chemicals of such
13 products without first providing clear and reasonable warnings of such to the exposed
14 persons prior to the time of exposure. Plaintiff later discerned that Defendants engaged
15 in such practice.

16 21. On February 27, 1987, the Governor of California added Lead to the list of chemicals
17 known to the State to cause reproductive toxicity (Cal. Code Regs. tit. 27, § 27001(c)).
18 Lead is known to the State to cause developmental toxicity, female reproductive toxicity,
19 and male reproductive toxicity. Pursuant to Health and Safety Code sections 25249.9 and
20 25249.10, twenty (20) months after addition of Lead to the list of chemicals known to the
21 State to cause reproductive toxicity, Lead became fully subject to Proposition 65 warning
22 requirements and discharge prohibitions.

23 22. On October 1, 1992, the Governor of California added Lead and lead compounds to the
24 list of chemicals known to the State to cause cancer (Cal. Code Regs. tit. 27, § 27001(b)).
25 Lead and lead compounds is known to the State to cause cancer. Pursuant to Health and
26 Safety Code sections 25249.9 and 25249.10, twenty (20) months after addition of Lead
27 and lead compounds to the list of chemicals known to the State to cause cancer, Lead and
28

1 lead compounds became fully subject to Proposition 65 warning requirements and
2 discharge prohibitions.

3 **SATISFACTION OF PRIOR NOTICE**

4 23. On or about December 20, 2016, Plaintiff served notice of alleged violations of Health
5 and Safety Code section 25249.6, concerning consumer products exposures, subject to a
6 private action to WALMART STORES, WALMART ASSOCIATES, WALMART
7 STARCO, WALMART EAST, WALMART USA, AMERICAN ROLAND, and to the
8 California Attorney General, County District Attorneys, and City Attorneys for each city
9 containing a population of at least 750,000 people in whose jurisdictions the violations
10 allegedly occurred, concerning the product Jarred Anchovies Fillets containing LEAD.

11 24. Before sending the notice of alleged violations, Plaintiff investigated the consumer
12 products involved, the likelihood that such products would cause users to suffer
13 significant exposures to LEAD, and the corporate structure of each of the Defendants.

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

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

26 27. Plaintiff is commencing this action more than sixty (60) days from the dates that
27 Plaintiff gave notices of the alleged violation to WALMART STORES, WALMART
28

1 ASSOCIATES, WALMART STARCO, WALMART EAST, WALMART USA,
2 AMERICAN ROLAND, and the public prosecutors referenced in Paragraph 23.

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

6
7 **FIRST CAUSE OF ACTION**

8 **(By CONSUMER ADVOCACY GROUP, INC. and against WALMART STORES,**
9 **WALMART ASSOCIATES, WALMART STARCO, WALMART EAST, WALMART**
10 **USA, AMERICAN ROLAND, and DOES 1-20 for Violations of Proposition 65, The Safe**
11 **Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et***
12 ***seq.*))**

13 **Jarred Anchovies Fillets**

14 29. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
15 reference paragraphs 1 through 28 of this complaint as though fully set forth herein.
16 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
17 distributor, promoter, or retailer of Jarred Anchovies Fillets, which includes but is not
18 limited to, ““Fillets of Anchovies”; in a glass container with a red and yellow metallic
19 lid; American Roland Foods Corporation; Net wt, 120g, 4.2oz; Serving Size 6 pieces
20 (15g); UPC: 041224182103” (“ANCHOVIES”).

21 30. ANCHOVIES contain LEAD.

22 31. Defendants knew or should have known that LEAD has been identified by the State of
23 California as a chemical known to cause cancer and reproductive toxicity and therefore
24 was subject to Proposition 65 warning requirements. Defendants were also informed of
25 the presence of LEAD in ANCHOVIES within Plaintiff’s notice of alleged violations
26 further discussed above at Paragraph 23.

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

1 25602(b). ANCHOVIES are consumer products, and, as mentioned herein, exposures to
2 LEAD took place as a result of such normal and foreseeable use.

3 33. Plaintiff is informed, believes, and thereon alleges that between December 20, 2013 and
4 the present, each of the Defendants knowingly and intentionally exposed California
5 consumers and users of ANCHOVIES, which Defendants manufactured, distributed, or
6 sold as mentioned above, to LEAD, without first providing any type of clear and
7 reasonable warning of such to the exposed persons before the time of exposure.
8 Defendants have distributed and sold ANCHOVIES in California. Defendants know
9 and intend that California consumers will use ANCHOVIES, thereby exposing them to
10 LEAD. Defendants thereby violated Proposition 65.

11 34. The principal routes of exposure were through ingestion, especially direct (oral)
12 ingestion, including hand to mouth pathways, inhalation, and trans-dermal absorption.
13 Persons sustained exposures by eating and consuming ANCHOVIES, handling
14 ANCHOVIES without wearing gloves or by touching bare skin or mucus membranes
15 with gloves after handling ANCHOVIES, or through direct and indirect hand to mouth
16 contact, hand to food to mouth, direct contact to food then to mouth, hand to mucous
17 membrane, or breathing in particulate matter emanating from ANCHOVIES, as well as
18 through environmental mediums that carry the LEAD once contained within the
19 ANCHOVIES.

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

1 36. 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 37. Based on the allegations herein, Defendants are liable for civil penalties of up to
5 \$2,500.00 per day per individual exposure to LEAD from ANCHOVIES, pursuant to
6 Health and Safety Code section 25249.7(b).

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

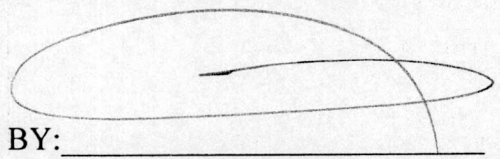
9 **PRAYER FOR RELIEF**

10 Plaintiff demands against each of the Defendants as follows:

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

16
17
18 Dated: March 1, 2017

YEROUSHALMI & YEROUSHALMI

19 
20 BY: _____

21 Reuben Yeroushalmi
22 Attorneys for Plaintiff,
23 Consumer Advocacy Group, Inc.