

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: William Fahey

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7 **PUBLIC HEALTH AND SAFETY ADVOCACY, LLC.**

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

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12
13 **PUBLIC HEALTH AND SAFETY**
14 **ADVOCACY, LLC., a Limited Liability**
15 **Company, in the public interest,**
16 **Plaintiff,**

17 **v.**

18 **PHILIPPINE FOODTRADE CORPORATION)**
19 **and DOES 1 through 50, inclusive,**
20
21 **Defendant(s)**

22 **CASE NO.: 21STCV43310**

**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.)**

UNLIMITED CIVIL

23 Plaintiff, **PUBLIC HEALTH AND SAFETY ADVOCACY, LLC.** alleges three (3) causes of
24 action against Defendants, **PHILIPPINE FOODTRADE CORPORATION** and **DOES 1 through 50,**
25 inclusive as follows:

26 **THE PARTIES**

27 **1.** Plaintiff, **PUBLIC HEALTH AND SAFETY ADVOCACY, LLC.** (“PHSA” or
28 “Plaintiff”) is an organization qualified to do business in the state of California. PHSA is a person within

1 the meaning of *Health & Safety Code §25249.11(a)*, and is dedicated to protecting the public from
2 environmental health hazards and toxic exposures. PHSA, acting as a private attorney general, brings
3 this enforcement action in the public interest pursuant to *Health & Safety Code §25249.7(d)*.

4 2. Defendants, **PHILIPPINE FOODTRADE CORPORATION** (“Philippine Foodtrade”
5 or “Defendants”) is a California corporation qualified to do business in California. Upon information
6 and belief, Plaintiff contends that the Defendants have conducted business within California at all
7 relevant times herein.

8 3. Plaintiff is presently unaware of the true names and capacities of Defendants, DOES 1
9 through 50, and therefore sues these Defendants by such fictitious names. Plaintiff will amend this
10 Complaint to allege the true names and capacities of said Defendants when the identities are ascertained.
11 Plaintiff is informed, believes and thereon alleges that each fictitiously named Defendant is responsible
12 in some manner for the occurrences herein alleged and the damages caused.

13 4. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
14 times mentioned herein have conducted business within the state of California.

15 5. Defendants own, administer, direct, control, sell, distribute, and/or operate facilities that
16 places three (3) products into the stream of commerce in California. The products (“Products”) are
17 outlined herein: (1) Dried Squid, UPC #030283101514; (2) Dried Herring, UPC #03028010038; and (3)
18 Smoked Indian Mackerel, UPC #030283090498. Due to several chemicals in the Products, the
19 Defendants are required to provide “clear and reasonable” warnings to consumers about the chemicals
20 under Proposition 65.
21

22 6. At all times mentioned herein, Defendants were legally responsible for compliance with
23 the provisions of Proposition 65. Whenever an allegation regarding any act of any Defendant is made
24 herein, such allegation shall be deemed to mean that Defendants, or its agents, officers, directors,
25 managers, supervisors, or employees, did or so authorize such acts while engaged in the affairs of
26 Defendants business operations and/or while acting within the course and scope of employment.
27

28 7. Upon information and belief, at all relevant times to this action, each of the Defendants,
including DOES 1-50, was an agent, servant, or employee of each of the other Defendants. In

1 conducting the activities alleged in this Complaint, each of the Defendants was acting within the course
2 and scope of this agency, service, or employment, and was acting with the consent, permission, and
3 authorization of each of the other Defendants. All actions of each of the Defendants alleged in this
4 Complaint were ratified and approved by every other Defendant or their officers or managing agents,
5 and/or negligently failed and omitted to act or adequately and properly supervise, control, or direct its
6 employees and agents while engaged in the management, direction, operation, or control of the affairs of
7 the business organizations. Alternatively, each of the Defendants aided, conspired with and/or
8 facilitated the alleged wrongful conduct of each of the other Defendants.
9

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

13 **JURISDICTION**

14 **9.** This Court has jurisdiction over this action pursuant to *California Constitution*,
15 *Article VI, Section 10*, which grants the Superior Court original jurisdiction in all causes except
16 those given by statute to other trial courts. This Court has jurisdiction over this action pursuant to
17 *Health and Safety Code Section 25249.7*, which allows enforcement of violations of Proposition 65
18 in any Court of competent jurisdiction.

19 **10.** This Court has jurisdiction over Defendants named herein because Defendants either
20 reside in California, are located in California, are foreign corporations authorized to do business in
21 California, are registered with the California Secretary of State, do sufficient business in California,
22 have sufficient minimum contacts with California, or otherwise intentionally avail themselves of
23 the markets within California through their manufacture, distribution, promotion, marketing, or sale
24 of their products within California to render the exercise of jurisdiction by the California courts
25 permissible under traditional notions of fair play and substantial justice.
26

27 **11.** Venue is proper in the County of Los Angeles because one or more of the instances
28 of wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
because the Defendants conducted, and continue to conduct business in the County of Los Angeles

1 with respect to the consumer Products that are the subject of this action. Said Products are
2 marketed, offered for sale, sold, used, and/or consumed without clear and reasonable warnings in
3 the County of Los Angeles.

4 **BACKGROUND AND PRELIMINARY FACTS**

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

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

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

25
26 **15.** Proposition 65 provides that any person “violating or threatening to violate” the
27 statute may be enjoined in a court of competent jurisdiction. *Health & Safety Code § 25249.7.*
28 “Threaten to violate” means “to create a condition in which there is a substantial probability that a
violation will occur.” *Id., § 25249.11 (e).* Defendants are also liable for civil penalties of up to

1 \$2,500.00 per day per violation, recoverable in a civil action. *Id.*, § 25249.7 (b).

2 **16.** Plaintiff identified certain practices of manufacturers and distributors who both in
3 the past and presently, knowingly and intentionally expose, persons in California to Lead and Lead
4 Compounds (“Lead”), and Cadmium and Cadmium Compounds (“Cadmium”) in such products
5 without first providing clear and reasonable warnings of such to the exposed persons prior to the
6 time of exposure. Plaintiff later discerned that Defendants engaged in such practice.

7 **17.** On February 27, 1987, the Governor of California added Lead to the list of
8 chemicals known to the State to cause developmental and reproductive toxicity. *Cal. Code Regs.*
9 *Tit. 27, §27001 (c)*. Lead is known to cause developmental and reproductive toxicity, in both males
10 and females. The Proposition 65 warning requirements and discharge prohibitions became
11 applicable to Lead within twenty (20) months after Lead was added to the list of chemicals known
12 to cause developmental and reproductive toxicity. *Health & Safety Code §§ 25249.9 and 25249.10*.

13 **18.** On October 1, 1987, the Governor of California added Cadmium to the list of
14 chemicals known to the State to cause cancer. *Cal. Code Regs. Tit. 27 §27001(b)*. The Proposition
15 65 warning requirements and discharge prohibitions became applicable to Cadmium within twenty
16 (20) months after Cadmium was added to the list of chemicals known to cause cancer. *Health &*
17 *Safety Code §§ 25249.9 and 25249.10*.

18 **19.** On October 1, 1992, the Governor of California added Lead to the list of chemicals
19 known to the State to cause cancer. *Cal. Code Regs. Tit. 27 §27001(b)*. The Proposition 65
20 warning requirements and discharge prohibitions became applicable to Lead within twenty (20)
21 months after Lead was added to the list of chemicals known to cause cancer. *Health & Safety Code*
22 *§§ 25249.9 and 25249.10*.

23 **20.** On May 1, 1997, the Governor of California added Cadmium to the list of chemicals
24 known to the State to cause developmental and reproductive toxicity. *Cal. Code Regs. Tit. 27,*
25 *§27001 (c)*. Lead is known to cause developmental and reproductive toxicity, in both males and
26 females. The Proposition 65 warning requirements and discharge prohibitions became applicable
27 to Cadmium within twenty (20) months after Cadmium was added to the list of chemicals known to
28

1 **26.** On or about November 9, 2020, Plaintiff gave notice (“Notice”) of the alleged
2 violations of *Health & Safety Code §25249.6* for the Dried Squid product to Defendants, the
3 California Attorney General, the District Attorney for each county in California and the City
4 Attorney for San Francisco, San Diego, San Jose, Sacramento and Los Angeles. The same notice
5 was sent on or about January 11, 2021 to the same parties with respect to the Dried Herring and
6 Smoked Indian Mackerel products. In compliance with *Health and Safety Code §25249.7(d)* and
7 *27 C.C.R. Code §25903(b)*, each Notice included the following information: the name, address, and
8 telephone number of the noticing party; the name of the alleged violator; the statute violated; the
9 approximate time period during which violations occurred; and descriptions of the violations
10 including the chemicals involved, the routes of toxic exposure, and the specific product or type of
11 product causing the violations.
12

13 **27.** Before sending the Notice of alleged violations, Plaintiff investigated the Products
14 to determine the likelihood that such a product would cause consumers to sustain significant
15 exposure to Lead and/or Cadmium. Plaintiff hired a well-respected and accredited testing
16 laboratory to test the Products. This laboratory uses testing protocols established and approved by
17 the California Attorney General.
18

19 **28.** Plaintiff also sent a Certificate of Merit for each Notice to the California Attorney
20 General, the District Attorneys of every county in California, the City Attorneys of every city in
21 California with a population greater than 750,000 and to the named Defendants. In compliance with
22 *Health & Safety Code § 2521-9.7(d)* and *11 C.C.R. § 3101*, each Certificate certified that Plaintiffs’
23 counsel: (1) has consulted with one or more persons with relevant and appropriate experience or
24 expertise who reviewed facts, studies or other data regarding the exposures to lead alleged in each
25 Notice; and (2) based on the information obtained through such consultations, believes that there is
26 a reasonable and meritorious case for a citizen enforcement action based on the facts alleged in
27 each Notice.
28

29. In reliance on the expert’s evaluation of the Products, Plaintiffs’ counsel is informed
and believes and thereon alleges that there is a reasonable and meritorious case against Defendants

1 for this private action.

2 30. Any person acting in the public interest has standing to enforce violations of
3 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid
4 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action
5 within such time. *Health & Safety Code* § 25249.7(d)

6 31. Plaintiff’s notice of alleged violations also included a Certificate of Service and a
7 document entitled “The Safe Drinking Water & Toxic Enforcement Act of 1986: A Summary”
8 *Health & Safety Code* § 25249.7(d)

9 32. Plaintiff is commencing this action more than sixty (60) days from the date Plaintiff
10 gave notice of the alleged violations to Defendants and the public prosecutor outlined above.

11 33. Plaintiff is informed, believes and thereon alleges that none of the public
12 prosecutors with the authority to prosecute violations of Proposition 65 has commenced or is
13 diligently prosecuting an action against the Defendants under *Health and Safety Code section*
14 *25249.5, et seq.* based on the allegations herein.

15 34. Plaintiff has engaged in good faith efforts to resolve the alleged violation prior to
16 filing this Complaint.

17 **FIRST CAUSE OF ACTION**

18 **Violation of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986**
19 **(Health & Safety Code §25249.5, et seq.)**

20 35. Plaintiff incorporates by reference paragraphs 1 through 34 of this Complaint as
21 though fully set forth herein.

22 36. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
23 importer, distributor, wholesaler, promoter, or retailer of Dried Squid, UPC #030283101514.

24 37. Dried Squid contains Lead and Cadmium.

25 38. Defendants knew or should have known that Lead and Cadmium have been
26 identified by the State of California as chemicals known to cause cancer and reproductive toxicity
27 and were therefore subject to Proposition 65 warnings requirement. Defendants were also
28

1 informed of the presence of Lead and Cadmium in Dried Squid and the Proposition 65 violations
2 when the Plaintiff served Notice to Defendants on November 9, 2020.

3 **39.** The allegations surrounding Dried Squid involve “[c]onsumer products exposure[s]”
4 which “is an exposure that results from a person’s acquisition, purchase, storage, consumption, or
5 other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a
6 consumer service.” *Cal. Code Regs. Tit.27 § 25602 (b)*. Dried Squid is a consumer product, and as
7 mentioned herein, exposures to Lead and Cadmium took place as a result of such normal and
8 foreseeable consumption and use.

9
10 **40.** Plaintiff is informed, believes, and thereon alleges that at least since November 9,
11 2018, and the present, each of the Defendants knowingly and intentionally exposed California
12 consumers and users of Dried Squid to Lead and Cadmium. Plaintiff is informed, believes, and
13 thereon alleges that Defendants manufactured, distributed, or sold the product Dried Squid, without
14 first providing any type of clear and reasonable warning of such to the exposed persons before the
15 time of exposure. Defendants know and intend that California consumers will use and consume
16 Dried Squid, thereby exposing them to Lead and Cadmium. Therefore, Defendants violated
17 Proposition 65.

18
19 **41.** The primary exposure to the Lead and Cadmium found in Dried Squid comes from
20 dermal contact, as well as direct and indirect ingestion and inhalation of the product. Persons
21 sustain exposures by eating and consuming Dried Squid and handling Dried Squid without wearing
22 gloves or any other personal equipment, or by touching bare skin or mucus membrane with after
23 handling Dried Squid, as well as through direct and indirect hand to mouth contact, hand to mucous
24 membrane, or breathing in particulate matter dispersed from Dried Squid.

25 **42.** Plaintiff is informed, believes and thereon alleges that each of the Defendant’s
26 violations of Proposition 65 as to Dried Squid has been ongoing and continuous, as Defendants
27 engaged and continue to engage in conduct which violates *Health and Safety Code § 25249.6*,
28 including the manufacture, distribution, promotion and sale of Dried Squid, so that a separate and

1 **50.** Plaintiff is informed, believes, and thereon alleges that at least since January 11,
2 2018 to the present, each of the Defendants knowingly and intentionally exposed California
3 consumers and users of Dried Herring to Lead. Plaintiff is informed, believes, and thereon alleges
4 that Defendants manufactured, distributed, or sold the product Dried Herring, without first
5 providing any type of clear and reasonable warning of such to the exposed persons before the time
6 of exposure or before distributing/ selling Dried Herring in California. Defendants know and
7 intend that California consumers will use and consume Dried Herring, thereby exposing them to
8 Lead. Therefore, Defendants violated Proposition 65.

9
10 **51.** The primary exposure to the Lead found in Dried Herring comes from dermal
11 contact, as well as direct and indirect ingestion and inhalation of the product. Persons sustain
12 exposures by eating and consuming Dried Herring and handling Dried Herring without wearing
13 gloves or any other personal equipment, or by touching bare skin or mucus membrane with gloves
14 after handling Dried Herring, as well as through direct and indirect hand to mouth contact, hand to
15 mucous membrane, or breathing in particulate matter dispersed from Dried Herring.

16 **52.** Plaintiff is informed, believes and thereon alleges that each of the Defendants’
17 violations of Proposition 65 as to Dried Herring have been ongoing and continuous, as Defendants
18 engaged and continue to engage in conduct which violates *Health and Safety Code § 25249.6*,
19 including the manufacture, distribution, promotion and sale of Dried Herring, so that a separate and
20 distinct violation of Proposition 65 occurs each time a person is exposed to Lead by contact with
21 Dried Herring as mentioned herein.

22
23 **53.** Plaintiff is informed, believes, and thereon alleges that each violation of Proposition
24 65 mentioned herein is ever continuing. Plaintiff further alleges and believes that the violations
25 alleged herein will continue to occur into the future.

26 **54.** Based on the allegations herein, Defendants are liable for civil penalties of up to
27 \$2,500.00 per day per individual exposure to Lead from Dried Herring, pursuant to *Health and*
28 *Safety Code §25249.7(b)*.

1 **THIRD CAUSE OF ACTION**

2 **Violation of Proposition 65, The Sate Drinking Water and Toxic Enforcement Act of 1986**
3 **(Health & Safety Code §25249.5, et seq.)**

4 55. Plaintiff incorporates by reference paragraphs 1 through 54 of this Complaint as
5 though fully set forth herein.

6 56. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
7 importer, distributor, wholesaler, promoter, or retailer of Smoked Indian Mackerel (“Mackerel”);
8 UPC # 030283090498.

9 57. Mackerel contains Lead.

10 58. Defendants knew or should have known that Lead has been identified by the State of
11 California as a chemical known to cause cancer and reproductive toxicity and were therefore
12 subject to Proposition 65 warnings requirement. Defendants were also informed of the presence of
13 Lead in Mackerel within Plaintiff’s notice of alleged violations further discussed above.
14

15 59. The allegations surrounding Mackerel involves “[c]onsumer products exposure[s]”
16 which “is an exposure that results from a person’s acquisition, purchase, storage, consumption, or
17 other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a
18 consumer service.” *Cal. Code Regs. Tit.27 § 25602 (b)*. Mackerel is a consumer product, and as
19 mentioned herein, exposure to Lead took place as a result of such normal and foreseeable
20 consumption and use.
21

22 60. Plaintiff is informed, believes, and thereon alleges that at least since January 11,
23 2018 to the present, each of the Defendants knowingly and intentionally exposed California
24 consumers and users of Mackerel to Lead. Plaintiff is informed, believes, and thereon alleges that
25 Defendants manufactured, distributed, or sold the product Mackerel, without first providing any
26 type of clear and reasonable warning of such to the exposed persons before the time of exposure or
27 before distributing/ selling Mackerel in California. Defendants know and intend that California
28 consumers will use and consume Mackerel, thereby exposing them to Lead. Therefore, Defendants

1 violated Proposition 65.

2 **61.** The primary exposure to the Lead found in Mackerel comes from dermal contact, as
3 well as direct and indirect ingestion and inhalation of the product. Persons sustain exposures by
4 eating and consuming Mackerel and handling Mackerel without wearing gloves or any other
5 personal equipment, or by touching bare skin or mucus membrane with gloves after handling
6 Mackerel, as well as through direct and indirect hand to mouth contact, hand to mucous membrane,
7 or breathing in particulate matter dispersed from Mackerel.
8

9 **62.** Plaintiff is informed, believes and thereon alleges that each of the Defendants’
10 violations of Proposition 65 as to Mackerel have been ongoing and continuous, as Defendants
11 engaged and continue to engage in conduct which violates *Health and Safety Code § 25249.6*,
12 including the manufacture, distribution, promotion and sale of Mackerel, so that a separate and
13 distinct violation of Proposition 65 occurs each time a person is exposed to Lead through contact
14 with Mackerel as mentioned herein.

15 **63.** Plaintiff is informed, believes, and thereon alleges that each violation of Proposition
16 65 mentioned herein is ever continuing. Plaintiff further alleges and believes that the violations
17 alleged herein will continue to occur into the future.
18

19 **64.** Based on the allegations herein, Defendants are liable for civil penalties of up to
20 \$2,500.00 per day per individual exposure to Lead from Mackerel, pursuant to *Health and Safety*
21 *Code §25249.7(b)*.

22 **PRAYER FOR RELIEF**


23
24 WHEREFORE, Plaintiff prays for relief and judgment against Defendants, as follows:

- 25 **1.** That the Court, pursuant to *Health & Safety Code § 25249.7(b)*, assess civil penalties
26 against the Defendants in the amount of \$2,500.00 per day for each violation of Proposition 65;
27
28 **2.** An injunctive order, pursuant to *Health and Safety Code §25249.7(b)* and *CCR title*
27, §25603 and 25603.1, compelling Defendants to adopt a compliance program by either (a)

1 reformulating the products such that no Proposition 65 warnings are required, or (b) providing
2 “clear and reasonable” warnings on the labels of the subject Products.

- 3 3. An award of reasonable attorney’s fees and cost; and
- 4
- 5 4. Such other and further relief that the Court may deem just and equitable.

6
7 DATED: November 24, 2021

8 BY: 

9 LAW OFFICES OF DANIALPOUR &
10 ASSOCIATES
11 Davar Danialpour, Esq.
12 Attorneys for Plaintiffs,
13 PUBLIC HEALTH & SAFETY ADVOCACY,
14 LLC.
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