

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Richard Fruin

1 Davar Danialpour, Esq., SBN 257374
2 LAW OFFICES OF DANIALPOUR & ASSOCIATES
3 An Association of Independent Lawyers
3 357 South Robertson Blvd. Suite 400
4 Beverly Hills, California 90211
4 Telephone: (310) 444-0055
5 Facsimile: (310) 444-0066
5 Email: david@davarlaw.com

6 Attorneys for Plaintiff,
7 **PUBLIC HEALTH AND SAFETY ADVOCACY, LLC.**

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

11
12 **PUBLIC HEALTH AND SAFETY**
13 **ADVOCACY, LLC., a Limited Liability**
14 **Company, in the public interest,**
15 **Plaintiff,**

16 v.

17 **ARKO FOODS INTERNATIONAL INC. dba**
18 **ASIAN COMMODITIES COMPANY and**
19 **DOES 1 through 50, inclusive,**
20 **Defendant(s)**

CASE NO.: 21STCV45379

**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

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24 Plaintiff, **PUBLIC HEALTH AND SAFETY ADVOCACY, LLC.** alleges four (4) causes of
25 action against Defendants, **ARKO FOODS INTERNATIONAL INC. dba ASIAN COMMODITIES**
26 **COMPANY** and DOES 1 through 50, inclusive as follows:

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THE PARTIES

1. Plaintiff, **PUBLIC HEALTH AND SAFETY ADVOCACY, LLC.** (“PHSA” or “Plaintiff”) is an organization qualified to do business in the state of California. PHSA is a person within the meaning of *Health & Safety Code §25249.11(a)*, and is dedicated to protecting the public from environmental health hazards and toxic exposures. PHSA, acting as a private attorney general, brings this enforcement action in the public interest pursuant to *Health & Safety Code §25249.7(d)*.

2. Defendants, **ARKO FOODS INTERNATIONAL INC. dba ASIAN COMMODITIES COMPANY** (“Arko Foods” or “Defendants”) is a California corporation qualified to do business in California. Upon information and belief, Plaintiff contends that the Defendants have conducted business within California at all relevant times herein.

3. Plaintiff is presently unaware of the true names and capacities of Defendants, DOES 1 through 50, and therefore sues these Defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true names and capacities of said Defendants when the identities are 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.

4. 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.

5. Defendants own, administer, direct, control, sell, distribute, and/or operate facilities that place three (3) products into the stream of commerce in California. The products (“Products”) are outlined herein: (1) Dried Salted Herring, UPC # 077396142133; (2) Dried Salted Indian Mackerel, UPC # 077396124887; (3) Dried Salted Rabbitfish, UPC # 077396125044; and (4) Dried Salted Threadfin Bream, UPC # 077396142119. Due to several chemicals in the Products, the Defendants are required to provide “clear and reasonable” warnings to consumers about the chemicals under Proposition 65.

6. At all times mentioned herein, Defendants were legally responsible for compliance with the provisions of Proposition 65. Whenever an allegation regarding any act of any Defendant is made herein, such allegation shall be deemed to mean that Defendants, or its agents, officers, directors,

1 managers, supervisors, or employees, did or so authorize such acts while engaged in the affairs of
2 Defendants business operations and/or while acting within the course and scope of employment.

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4 7. Upon information and belief, at all relevant times to this action, each of the Defendants,
5 including DOES 1-50, was an agent, servant, or employee of each of the other Defendants. In
6 conducting the activities alleged in this Complaint, each of the Defendants was acting within the course
7 and scope of this agency, service, or employment, and was acting with the consent, permission, and
8 authorization of each of the other Defendants. All actions of each of the Defendants alleged in this
9 Complaint were ratified and approved by every other Defendant or their officers or managing agents,
10 and/or negligently failed and omitted to act or adequately and properly supervise, control, or direct its
11 employees and agents while engaged in the management, direction, operation, or control of the affairs of
12 the business organizations. Alternatively, each of the Defendants aided, conspired with and/or
13 facilitated the alleged wrongful conduct of each of the other Defendants.

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

17 JURISDICTION

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

23 10. This Court has jurisdiction over Defendants named herein because Defendants either
24 reside in California, are located in California, are foreign corporations authorized to do business in
25 California, are registered with the California Secretary of State, do sufficient business in California,
26 have sufficient minimum contacts with California, or otherwise intentionally avail themselves of
27 the markets within California through their manufacture, distribution, promotion, marketing, or sale
28 of their products within California to render the exercise of jurisdiction by the California courts

1 permissible under traditional notions of fair play and substantial justice.

2 **11.** Venue is proper in the County of Los Angeles because one or more of the instances
3 of wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
4 because the Defendants conducted, and continue to conduct business in the County of Los Angeles
5 with respect to the consumer Products that are the subject of this action. Said Products are
6 marketed, offered for sale, sold, used, and/or consumed without clear and reasonable warnings in
7 the County of Los Angeles.
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9 **BACKGROUND AND PRELIMINARY FACTS**

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

18 **13.** Proposition 65 requires the Governor of California to publish a list of chemicals
19 known to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
20 *§ 25249.8.* The list, which the Governor updates at least once a year, contains over 700 chemicals
21 and chemical families. Proposition 65 imposes warning requirements and other controls that apply
22 to Proposition 65-listed chemicals.
23

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

1 **15.** Proposition 65 provides that any person “violating or threatening to violate” the
2 statute may be enjoined in a court of competent jurisdiction. *Health & Safety Code § 25249.7.*
3 “Threaten to violate” means “to create a condition in which there is a substantial probability that a
4 violation will occur.” *Id.*, § 25249.11 (e). Defendants are also liable for civil penalties of up to
5 \$2,500.00 per day per violation, recoverable in a civil action. *Id.*, § 25249.7 (b).
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7 **16.** Plaintiff identified certain practices of manufacturers and distributors who both in
8 the past and presently, knowingly and intentionally expose, persons in California to Lead and Lead
9 Compounds (“Lead”), and Cadmium and Cadmium Compounds (“Cadmium”) in such products
10 without first providing clear and reasonable warnings of such to the exposed persons prior to the
11 time of exposure. Plaintiff later discerned that Defendants engaged in such practice.

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

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

23 **19.** On October 1, 1992, the Governor of California added Lead to the list of chemicals
24 known to the State to cause cancer. *Cal. Code Regs. Tit. 27 §27001(b).* The Proposition 65
25 warning requirements and discharge prohibitions became applicable to Lead within twenty (20)
26 months after Lead was added to the list of chemicals known to cause cancer. *Health & Safety Code*
27 *§§ 25249.9 and 25249.10.*
28

20. On May 1, 1997, the Governor of California added Cadmium to the list of chemicals

1 known to the State to cause developmental and reproductive toxicity. *Cal. Code Regs. Tit. 27,*
2 *§27001 (c).* Lead is known to cause developmental and reproductive toxicity, in both males and
3 females. The Proposition 65 warning requirements and discharge prohibitions became applicable
4 to Cadmium within twenty (20) months after Cadmium was added to the list of chemicals known to
5 cause developmental and reproductive toxicity. *Health & Safety Code §§ 25249.9 and 25249.10.*

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7 **21.** The level of exposure to a chemical causing cancer, or reproductive toxicity under
8 Proposition 65 is determined by multiplying the level in question times the reasonably anticipated
9 rate of exposure for an individual to a given medium. *27 C.C.R. § 25821(b).* For exposure to
10 consumer products, the level of exposure is calculated using the reasonably anticipated rate of
11 intake or exposure for average users of the consumer product. *27 C.C.R. § 25821(C)(2).*

12 **22.** Defendants manufacture and distribute four (4) products, (1) Dried Salted Herring,
13 UPC # 077396142133; (2) Dried Salted Indian Mackerel, UPC # 077396124887; (3) Dried Salted
14 Rabbitfish, UPC # 077396125044; and (4) Dried Salted Threadfin Bream, UPC # 077396142119.
15 The Products contain enough Lead and/or Cadmium such that consumers, including pregnant
16 women, who consume the Products are exposed to Lead and/or Cadmium. The primary route of
17 exposure for the violations happens when consumers ingest the Products orally. These exposures
18 occur in homes, workplaces and everywhere in California where the Products are consumed.

19 **23.** During the relevant one-year period herein, no clear and reasonable warning was
20 provided to consumers when the Products were manufactured and released into the stream of
21 commerce to warn consumers about the possible exposure to cancer, developmental or reproductive
22 hazards from Lead or Cadmium when the Products are consumed.

23 **NOTICE OF VIOLATION**

24 **24.** At all times relevant to this action, the Defendants have knowingly and intentionally
25 exposed the users/consumers of the Products to Lead and/or Cadmium by recommending that
26 consumers ingest the Products without first giving a clear and reasonable warning to such
27 individuals.

28 **25.** The Defendants have sold the Products to consumers in California at least since

1 January 11, 2018. The Products continue to be imported, distributed and sold in California without
2 the requisite warning information. Consumers are exposed to Lead and/or Cadmium when the
3 Products are ingested.

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

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

27 **29.** In reliance on the expert’s evaluation of the Products, Plaintiffs’ counsel is informed
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1 California as chemicals known to cause cancer and reproductive toxicity and were therefore subject
2 to Proposition 65 warnings requirement. Defendants were also informed of the presence of Lead in
3 Salted Herring d and the Proposition 65 violations when the Plaintiff served Notice to Defendants
4 on January 11, 2021.

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

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

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

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27 **42.** Plaintiff is informed, believes and thereon alleges that each of the Defendants’
28 violations of Proposition 65 as to Salted Herring has been ongoing and continuous, as Defendants
engaged and continue to engage in conduct which violates *Health and Safety Code § 25249.6*,

1 including the manufacture, distribution, promotion and sale of Salted Herring, so that a separate
2 and distinct violation of Proposition 65 occurs each time a person is exposed to Lead by Salted
3 Herring as mentioned herein.

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

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8 **44.** Based on the allegations herein, Defendants are liable for civil penalties of up to
9 \$2,500.00 per day per individual exposure to Lead from Salted Herring, pursuant to Health and
10 Safety Code §25249.7(b).

11 **SECOND CAUSE OF ACTION**

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

14 **45.** Plaintiff incorporates by reference paragraphs 1 through 44 of this Complaint as
15 though fully set forth herein.

16 **46.** Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
17 importer, distributor, wholesaler, promoter, or retailer of Dried Salted Indian Mackerel (“Indian
18 Mackerel”), UPC # 077396124887.

19 **47.** Indian Mackerel contains Lead.

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21 **48.** Defendants knew or should have known that Lead has been identified by the State of
22 California as chemicals known to cause cancer and reproductive toxicity and were therefore subject
23 to Proposition 65 warnings requirement. Defendants were also informed of the presence of Lead in
24 Indian Mackerel and the Proposition 65 violations when the Plaintiff served Notice to Defendants
25 on January 11, 2021.

26 **49.** The allegations surrounding Indian Mackerel involve “[c]onsumer products
27 exposure[s]” which “is an exposure that results from a person’s acquisition, purchase, storage,
28 consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results

1 from receiving a consumer service.” *Cal. Code Regs. Tit.27 § 25602 (b)*. Indian Mackerel is a
2 consumer product, and as mentioned herein, exposures to Lead took place as a result of such
3 normal and foreseeable consumption and use.

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

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

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

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
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1 \$2,500.00 per day per individual exposure to Lead from Indian Mackerel, pursuant to Health and
2 Safety Code §25249.7(b).

3 **THIRD CAUSE OF ACTION**

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

6 **55.** Plaintiff incorporates by reference paragraphs 1 through 54 of this Complaint as
7 though fully set forth herein.

8 **56.** Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
9 importer, distributor, wholesaler, promoter, or retailer of Dried Salted Rabbitfish, UPC #
10 077396125044.

11 **57.** Salted Rabbitfish contains Lead and Cadmium.

12 **58.** Defendants knew or should have known that Lead and Cadmium have been
13 identified by the State of California as chemicals known to cause cancer and reproductive toxicity
14 and were therefore subject to Proposition 65 warnings requirement. Defendants were also
15 informed of the presence of Lead and Cadmium in Salted Rabbitfish and the Proposition 65
16 violations when the Plaintiff served Notice to Defendants on January 11, 2021.

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

23 **60.** Plaintiff is informed, believes, and thereon alleges that at least since January 11,
24 2018, and the present, each of the Defendants knowingly and intentionally exposed California
25 consumers and users of Salted Rabbitfish to Lead and Cadmium. Plaintiff is informed, believes,
26 and thereon alleges that Defendants manufactured, distributed, or sold the product Salted
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1 Rabbitfish, without first providing any type of clear and reasonable warning of such to the exposed
2 persons before the time of exposure. Defendants know and intend that California consumers will
3 use and consume Salted Rabbitfish, thereby exposing them to Lead and Cadmium. Therefore,
4 Defendants violated Proposition 65.

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

13 **62.** Plaintiff is informed, believes and thereon alleges that each of the Defendant's
14 violations of Proposition 65 as to Salted Rabbitfish has been ongoing and continuous, as
15 Defendants engaged and continue to engage in conduct which violates *Health and Safety Code §*
16 *25249.6*, including the manufacture, distribution, promotion and sale of Salted Rabbitfish, so that a
17 separate and distinct violation of Proposition 65 occurs each time a person is exposed to Lead and
18 Cadmium by Salted Rabbitfish as mentioned herein.

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

23 **64.** Based on the allegations herein, Defendants are liable for civil penalties of up to
24 \$2,500.00 per day per individual exposure to Lead and Cadmium from Salted Rabbitfish, pursuant
25 to Health and Safety Code §25249.7(b).

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1 **FOURTH 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 **65.** Plaintiff incorporates by reference paragraphs 1 through 64 of this Complaint as
5 though fully set forth herein.

6 **66.** Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
7 importer, distributor, wholesaler, promoter, or retailer of Dried Salted Threadfin Bream
8 (“Threadfin Bream”), UPC # 077396142119.

9 **67.** Threadfin Bream contains Lead.

10 **68.** Defendants knew or should have known that Lead has been identified by the State of
11 California as chemicals known to cause cancer and reproductive toxicity and were therefore subject
12 to Proposition 65 warnings requirement. Defendants were also informed of the presence of Lead in
13 Threadfin Bream and the Proposition 65 violations when the Plaintiff served Notice to Defendants
14 on January 11, 2021.

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

21 **70.** Plaintiff is informed, believes, and thereon alleges that at least since January 11,
22 2018 and the present, each of the Defendants knowingly and intentionally exposed California
23 consumers and users of Threadfin Bream to Lead. Plaintiff is informed, believes, and thereon
24 alleges that Defendants manufactured, distributed, or sold the product Threadfin Bream, without
25 first providing any type of clear and reasonable warning of such to the exposed persons before the
26 time of exposure. Defendants know and intend that California consumers will use and consume
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1 Threadfin Bream, thereby exposing them to Lead. Therefore, Defendants violated Proposition 65.

2 71. The primary exposure to the Lead found in Threadfin Bream comes from dermal
3 contact, as well as direct and indirect ingestion and inhalation of the product. Persons sustain
4 exposures by eating and consuming Threadfin Bream and handling Threadfin Bream without
5 wearing gloves or any other personal equipment, or by touching bare skin or mucus membrane with
6 after handling Threadfin Bream, as well as through direct and indirect hand to mouth contact, hand
7 to mucous membrane, or breathing in particulate matter dispersed from Threadfin Bream.
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9 72. Plaintiff is informed, believes and thereon alleges that each of the Defendants'
10 violations of Proposition 65 as to Threadfin Bream has been ongoing and continuous, as
11 Defendants engaged and continue to engage in conduct which violates *Health and Safety Code §*
12 *25249.6*, including the manufacture, distribution, promotion and sale of Threadfin Bream, so that a
13 separate and distinct violation of Proposition 65 occurs each time a person is exposed to Lead by
14 Threadfin Bream as mentioned herein.
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16 73. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition
17 65 mentioned herein is ever continuing. Plaintiff further alleges and believes that the violations
18 alleged herein will continue to occur into the future.

19 74. 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 Threadfin Bream, pursuant to Health and
21 Safety Code §25249.7(b).
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23 **PRAYER FOR RELIEF**

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 2. An injunctive order, pursuant to *Health and Safety Code §25249.7(b)* and *CCR title*
28 *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: December 13, 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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