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Superior Court of California,
County of Alameda

04/01/2022 at 12:00:00 AM

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9 CONSUMER ADVOCACY GROUP, INC.

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

11 **COUNTY OF ALAMEDA**

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

14 Plaintiff,

15 v.

16 ROM AMERICA, INC., a California
17 Corporation;
18 GREENLAND SUPERMARKET, INC. a
19 Nevada Corporation;
20 and DOES 1-10,

21 Defendants.

CASE NO. **22CV009370**

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)

22
23 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges one cause of action against
24 defendants ROM AMERICA, INC.; GREENLAND SUPERMARKET, INC. and DOES 1-10
25 as follows:

26 **THE PARTIES**

- 27 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an
28 organization qualified to do business in the State of California. CAG is a person within

1 the meaning of Health and Safety Code Section 25249.11, subdivision (a). CAG, acting
2 as a private attorney general, brings this action in the public interest as defined under
3 Health and Safety Code Section 25249.7, subdivision (d).

4 2. Defendant ROM AMERICA, INC. (“ROM AMERICA”) is a California Corporation
5 qualified to do business in California, and doing business in the State of California at all
6 relevant times herein.

7 3. Defendant GREENLAND SUPERMARKET, INC. (“GREENLAND”) is a Nevada
8 Corporation doing business in the State of California at all relevant times herein.

9 4. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-10,
10 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
11 Complaint to allege their true names and capacities when ascertained. Plaintiff is
12 informed, believes, and thereon alleges that each fictitiously named defendant is
13 responsible in some manner for the occurrences herein alleged and the damages caused
14 thereby.

15 5. At all times mentioned herein, the term “Defendants” includes ROM AMERICA,
16 GREENLAND, and DOES 1-10.

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

19 7. Upon information and belief, at all times relevant to this action, each of the Defendants,
20 including DOES 1-10, was an agent, servant, or employee of each of the other
21 Defendants. In conducting the activities alleged in this Complaint, each of the
22 Defendants was acting within the course and scope of this agency, service, or
23 employment, and was acting with the consent, permission, and authorization of each of
24 the other Defendants. All actions of each of the Defendants alleged in this Complaint
25 were ratified and approved by every other Defendant or their officers or managing
26 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the
27 alleged wrongful conduct of each of the other Defendants.

28

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

5 **JURISDICTION**

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

11 10. This Court has jurisdiction over Defendants named herein because Defendants either
12 reside or are located in this State or are foreign corporations authorized to do business in
13 California, are registered with the California Secretary of State, or who do sufficient
14 business in California, have sufficient minimum contacts with California, or otherwise
15 intentionally avail themselves of the markets within California through their
16 manufacture, distribution, promotion, marketing, or sale of their products within
17 California to render the exercise of jurisdiction by the California courts permissible
18 under traditional notions of fair play and substantial justice.

19 11. Venue is proper in the County of Alameda because one or more of the instances of
20 wrongful conduct occurred, and continues to occur, in the County of Alameda and/or
21 because Defendants conducted, and continue to conduct, business in the County of
22 Alameda with respect to the consumer product that is the subject of this action.

23 **BACKGROUND AND PRELIMINARY FACTS**

24 12. In 1986, California voters approved an initiative to address growing concerns about
25 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to
26 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,
27 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
28

1 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code Sections
2 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources
3 from contamination, to allow consumers to make informed choices about the products
4 they buy, and to enable persons to protect themselves from toxic chemicals as they see
5 fit.

6 13. Proposition 65 requires the Governor of California to publish a list of chemicals known
7 to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*
8 *Code* § 25249.8. The list, which the Governor updates at least once a year, contains over
9 700 chemicals and chemical families. Proposition 65 imposes warning requirements and
10 other controls that apply to Proposition 65-listed chemicals.

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

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

23 16. Plaintiff identified certain practices of manufacturers and distributors of Dried Anchovy
24 of exposing, knowingly and intentionally, persons in California to Lead and Lead
25 Compounds and Cadmium and Cadmium Compounds of such products without first
26 providing clear and reasonable warnings of such to the exposed persons prior to the time
27 of exposure. Plaintiff later discerned that Defendants engaged in such practice.

1 17. On October 1, 1992 the Governor of California added Lead and Lead Compounds
2 (“Lead”) to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit.
3 27, § 27001(b)). Pursuant to Health and Safety Code Sections 25249.9 and 25249.10,
4 twenty (20) months after addition of Lead to the list of chemicals known to the State to
5 cause cancer, Lead became fully subject to Proposition 65 warning requirements and
6 discharge prohibitions.

7 18. On February 27, 1987, the Governor of California added Lead to the list of chemicals
8 known to the State to cause developmental and reproductive toxicity (*Cal. Code Regs.*
9 tit. 27, § 27001(c)). Lead is known to the State to cause developmental, female, and
10 male reproductive toxicity. Pursuant to Health and Safety Code Sections 25249.9 and
11 25249.10, twenty (20) months after addition of Lead to the list of chemicals known to
12 the State to cause developmental and reproductive toxicity, Lead became fully subject to
13 Proposition 65 warning requirements and discharge prohibitions.

14 19. On October 1, 1987 the Governor of California added Cadmium and Cadmium
15 Compounds (“Cadmium”) to the list of chemicals known to the State to cause cancer
16 (*Cal. Code Regs.* tit. 27, § 27001(b)). Pursuant to Health and Safety Code Sections
17 25249.9 and 25249.10, twenty (20) months after addition of Cadmium to the list of
18 chemicals known to the State to cause cancer, Cadmium became fully subject to
19 Proposition 65 warning requirements and discharge prohibitions.

20 20. On May 1, 1997, the Governor of California added Cadmium to the list of chemicals
21 known to the State to cause developmental and reproductive toxicity (*Cal. Code Regs.*
22 tit. 27, § 27001(c)). Cadmium is known to the State to cause developmental, and male
23 reproductive toxicity. Pursuant to Health and Safety Code Sections 25249.9 and
24 25249.10, twenty (20) months after addition of Cadmium to the list of chemicals known
25 to the State to cause developmental and reproductive toxicity, Cadmium became fully
26 subject to Proposition 65 warning requirements and discharge prohibitions.

27 **SATISFACTION OF PRIOR NOTICE**

1 21. Plaintiff served the following notices for alleged violations of Health and Safety Code
2 Section 25249.6, concerning consumer products exposures:

3 a. On or about October 15, 2021, Plaintiff gave notice of alleged violations of
4 Health and Safety Code Section 25249.6, concerning consumer products
5 exposures subject to a private action to ROM AMERICA, GREENLAND, and
6 to the California Attorney General, County District Attorneys, and City
7 Attorneys for each city containing a population of at least 750,000 people in
8 whose jurisdictions the violations allegedly occurred, concerning the Dried
9 Anchovy.

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

14 23. 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 for
16 Plaintiff who executed the certificate had consulted with at least one person with relevant
17 and appropriate expertise who reviewed data regarding the exposures to Lead and
18 Cadmium, the subject Proposition 65-listed chemical of this action. Based on that
19 information, the attorney for Plaintiff who executed the Certificate of Merit believed
20 there was a reasonable and meritorious case for this private action. The attorney for
21 Plaintiff attached to the Certificate of Merit served on the Attorney General the
22 confidential factual information sufficient to establish the basis of the Certificate of
23 Merit.

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

1 25. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
2 gave notice of the alleged violations to ROM AMERICA, GREENLAND, and the public
3 prosecutors referenced in Paragraph 21.

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

7
8 **FIRST CAUSE OF ACTION**

9 **(By CONSUMER ADVOCACY GROUP, INC. and against ROM AMERICA,**
10 **GREENLAND , and DOES 1-10 for Violations of Proposition 65, The Safe**
11 **Drinking Water and Toxic Enforcement Act of 1986 (Health & Safety Code, §§**
12 **25249.5, et seq.))**

13 **Dried Seafood**

14 27. Plaintiff repeats and incorporates by reference paragraphs 1 through 26 of this complaint
15 as though fully set forth herein.

16 28. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
17 distributor, promoter, or retailer of Dried Anchovy ("Anchovy"), including but not
18 limited to •“Dried Anchovy”; “Net Wt. 12oz”; “Net 310g”; “UPC 0 37557 80510 9”; •
19 “Dasi Anchovy”; “Net Wt. 12oz”; “Net 310g”; “UPC 0 37557 80509 3”;

20 29. Anchovy contains Lead and Cadmium.

21 30. Defendants knew or should have known that Lead and Cadmium has been identified by
22 the State of California as a chemical known to cause cancer, and reproductive toxicity
23 and therefore was subject to Proposition 65 warning requirements. Defendants were also
24 informed of the presence of Lead and Cadmium in Anchovy within Plaintiff's notice of
25 alleged violations further discussed above at Paragraph 21a.

26 31. Plaintiff's allegations regarding Anchovy concerns “[c]onsumer products exposure[s],”
27 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 from receiving a consumer service.” *Cal. Code Regs. tit. 27, § 25602(b).*

1 Anchovy is a consumer product, and, as mentioned herein, exposures to Lead and
2 Cadmium took place as a result of such normal and foreseeable consumption and use.

3 32. Plaintiff is informed, believes, and thereon alleges that between October 15, 2018 and
4 the present, each of the Defendants knowingly and intentionally exposed California
5 consumers and users of Anchovy, which Defendants manufactured, distributed, or sold
6 as mentioned above, to Lead and Cadmium, 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 Anchovy in California. Defendants know and
9 intend that California consumers will use and consume Anchovy, thereby exposing them
10 to Lead and Cadmium. Further, Plaintiff is
11 informed, believes, and thereon alleges that Defendants are selling Product under a brand
12 or trademark that is owned or licensed by the Defendants or an entity affiliated thereto;
13 have knowingly introduced relevant chemical into product or knowingly caused relevant
14 chemical to be created in Product; have covered, obscured or altered a warning label that
15 has been affixed to Product by the manufacturer, producer, packager, importer, supplier
16 or distributor of Product; have received a notice and warning materials for exposure from
17 Product without conspicuously posting or displaying the warning materials; and/or have
18 actual knowledge of potential exposure to relevant chemical from Product. Defendants
19 thereby violated Proposition 65.

20 33. The principal routes of exposure are through dermal contact, ingestion and inhalation.
21 Persons sustain exposures by eating and consuming Anchovy, as well as through direct
22 and indirect hand to mouth contact, hand to mucous membrane, or breathing in
23 particulate matter dispersed from Anchovy.

24 34. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
25 Proposition 65 as to Anchovy have been ongoing and continuous, as Defendants engaged
26 and continue to engage in conduct which violates Health and Safety Code Section
27 25249.6, including the manufacture, distribution, promotion, and sale of Anchovy, so
28

1 that a separate and distinct violation of Proposition 65 occurred each and every time a
2 person was exposed to Lead and Cadmium by Anchovy as mentioned herein.

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

6 36. Based on the allegations herein, Defendants are liable for civil penalties of up to
7 \$2,500.00 per day per individual exposure to Lead and Cadmium from Anchovy,
8 pursuant to Health and Safety Code Section 25249.7(b).

9 37. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
10 filing this Complaint.

11
12 **PRAYER FOR RELIEF**

13 Plaintiff demands against each of the Defendants as follows:

14 38. A permanent injunction mandating Proposition 65-compliant warnings;

15 39. Penalties pursuant to Health and Safety Code Section 25249.7, subdivision (b);

16 40. Costs of suit;

17 41. Reasonable attorney fees and costs; and

18 42. Any further relief that the court may deem just and equitable.

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20 Dated: March 31, 2022

YEROUSHALMI & YEROUSHALMI*

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23 _____
24 Reuben Yeroushalmi
25 Attorneys for Plaintiff,
26 CONSUMER ADVOCACY GROUP, INC.
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