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8 CONSUMER ADVOCACY GROUP, INC.

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County of Alameda
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Deputy Clerk

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF ALAMEDA**

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

13 Plaintiff,

14 v.

15 G.L. FOOD WHOLESALE INC., a
16 Delaware Corporation;
17 and DOES 1-10,

18 Defendants.

CASE NO. **22CV024436**

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)

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22 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges one cause of action against
23 defendants G.L. FOOD WHOLESALE INC. and DOES 1-10 as follows:

24 **THE PARTIES**

- 25 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an
26 organization qualified to do business in the State of California. CAG is a person within
27 the meaning of Health and Safety Code Section 25249.11, subdivision (a). CAG, acting
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1 as a private attorney general, brings this action in the public interest as defined under
2 Health and Safety Code Section 25249.7, subdivision (d).

3 2. Defendant G.L. FOOD WHOLESALE INC. (“G.L. FOOD”) is a California Corporation
4 doing business in the State of California at all relevant times herein.

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

11 4. At all times mentioned herein, the term “Defendants” includes G.L. FOOD and DOES 1-
12 10.

13 5. 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 6. Upon information and belief, at all times relevant to this action, each of the Defendants,
16 including DOES 1-10, was an agent, servant, or employee of each of the other
17 Defendants. In conducting the activities alleged in this Complaint, each of the
18 Defendants was acting within the course and scope of this agency, service, or
19 employment, and was acting with the consent, permission, and authorization of each of
20 the other Defendants. All actions of each of the Defendants alleged in this Complaint
21 were ratified and approved by every other Defendant or their officers or managing
22 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the
23 alleged wrongful conduct of each of the other Defendants.

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

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1 **JURISDICTION**

- 2 8. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
3 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
4 those given by statute to other trial courts. This Court has jurisdiction over this action
5 pursuant to Health and Safety Code Section 25249.7, which allows enforcement of
6 violations of Proposition 65 in any Court of competent jurisdiction.
- 7 9. This Court has jurisdiction over Defendants named herein because Defendants either
8 reside or are located in this State or are foreign corporations authorized to do business in
9 California, are registered with the California Secretary of State, or who do sufficient
10 business in California, have sufficient minimum contacts with California, or otherwise
11 intentionally avail themselves of the markets within California through their
12 manufacture, distribution, promotion, marketing, or sale of their products within
13 California to render the exercise of jurisdiction by the California courts permissible
14 under traditional notions of fair play and substantial justice.
- 15 10. Venue is proper in the County of Alameda because one or more of the instances of
16 wrongful conduct occurred, and continues to occur, in the County of Alameda and/or
17 because Defendants conducted, and continue to conduct, business in the County of
18 Alameda with respect to the consumer product that is the subject of this action.

19 **BACKGROUND AND PRELIMINARY FACTS**

- 20 11. In 1986, California voters approved an initiative to address growing concerns about
21 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to
22 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,
23 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
24 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code Sections
25 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources
26 from contamination, to allow consumers to make informed choices about the products
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1 they buy, and to enable persons to protect themselves from toxic chemicals as they see
2 fit.

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

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

14 14. Proposition 65 provides that any person "violating or threatening to violate" the statute
15 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §
16 25249.7. "Threaten to violate" means "to create a condition in which there is a
17 substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).
18 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
19 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

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

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

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

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

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

24 **SATISFACTION OF PRIOR NOTICE**

25 20. Plaintiff served the following notices for alleged violations of Health and Safety Code
26 Section 25249.6, concerning consumer products exposures:

1 a. On or about May 12, 2022, Plaintiff gave notice of alleged violations of Health
2 and Safety Code Section 25249.6, concerning consumer products exposures
3 subject to a private action to G.L. FOOD, and to the California Attorney
4 General, County District Attorneys, and City Attorneys for each city containing
5 a population of at least 750,000 people in whose jurisdictions the violations
6 allegedly occurred, concerning the Dried Anchovy.

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

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

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

24 24. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
25 gave notice of the alleged violations to G.L. FOOD, and the public prosecutors
26 referenced in Paragraph 20.

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

4 **FIRST CAUSE OF ACTION**

5 **(By CONSUMER ADVOCACY GROUP, INC. and against G.L. FOOD, and**
6 **DOES 1-10 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
7 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

8 **Seafood Product**

9 26. Plaintiff repeats and incorporates by reference paragraphs 1 through 25 of this complaint
10 as though fully set forth herein.

11 27. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
12 distributor, promoter, or retailer of Dried Anchovy (“Anchovy”), including but not
13 limited to "Kapuso Brand"; "Wild Caught Dried Anchovy Dilis"; "Net Wt. 8 oz (225 g)";
14 "Imported for GL Food Wholesale Inc."; "Product of Vietnam"; "UPC 8 935091
15 139150".

16 28. Anchovy contains Lead and Cadmium.

17 29. Defendants knew or should have known that Lead and Cadmium has been identified by
18 the State of California as a chemical known to cause cancer, and reproductive toxicity
19 and therefore was subject to Proposition 65 warning requirements. Defendants were also
20 informed of the presence of Lead and Cadmium in Anchovy within Plaintiff's notice of
21 alleged violations further discussed above at Paragraph 20a.

22 30. Plaintiff's allegations regarding Anchovy concerns “[c]onsumer products exposure[s],”
23 which “is an exposure that results from a person’s acquisition, purchase, storage,
24 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
25 that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, § 25602(b).*
26 Anchovy is consumer products, and, as mentioned herein, exposures to Lead and
27 Cadmium took place as a result of such normal and foreseeable consumption and use.

1 31. Plaintiff is informed, believes, and thereon alleges that between May 12, 2019 and the
2 present, each of the Defendants knowingly and intentionally exposed California
3 consumers and users of Anchovy, which Defendants manufactured, distributed, or sold
4 as mentioned above, to Lead and Cadmium, without first providing any type of clear and
5 reasonable warning of such to the exposed persons before the time of exposure.

6 Defendants have distributed and sold Anchovy in California. Defendants know and
7 intend that California consumers will use and consume Anchovy, thereby exposing them
8 to Lead and Cadmium. Further, Plaintiff is informed, believes, and thereon alleges that
9 Defendants are selling Anchovy under a brand or trademark that is owned or licensed by
10 the Defendants or an entity affiliated thereto; have knowingly introduced Lead and
11 Cadmium into Anchovy or knowingly caused Lead and Cadmium to be created in
12 Anchovy; have covered, obscured or altered a warning label that has been affixed to
13 Anchovy by the manufacturer, producer, packager, importer, supplier or distributor of
14 Anchovy; have received a notice and warning materials for exposure from Anchovy
15 without conspicuously posting or displaying the warning materials; and/or have actual
16 knowledge of potential exposure to Lead and Cadmium from Anchovy. Defendants
17 thereby violated Proposition 65.

18 32. The principal routes of exposure are through dermal contact, ingestion and inhalation.
19 Persons sustain exposures by handling Anchovy without wearing gloves or any other
20 personal protective equipment, or by touching bare skin or mucous membranes with
21 gloves after handling Anchovy, as well as through direct and indirect hand to mouth
22 contact, hand to mucous membrane, or breathing in particulate matter dispersed from
23 Anchovy.

24 33. 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
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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 34. 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 35. 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 36. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
10 filing this Complaint.

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12 **PRAYER FOR RELIEF**

13 Plaintiff demands against each of the Defendants as follows:

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

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

16 39. Costs of suit;

17 40. Reasonable attorney fees and costs; and

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

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20 Dated: December 22, 2022

YEROUSHALMI & YEROUSHALMI*

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22
23 /s/ Reuben Yeroushalmi

Reuben Yeroushalmi

Attorneys for Plaintiff,

CONSUMER ADVOCACY GROUP, INC.