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8 Attorneys for Plaintiff,

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 EASTLAND FOOD INTERNATIONAL  
17 CORP., a California Corporation;  
18 and DOES 1-10,

19 Defendants.

CASE NO. 23CV041089

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 EASTLAND FOOD INTERNATIONAL CORP., 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 EASTLAND FOOD INTERNATIONAL CORP. (“EASTLAND FOOD”) is  
4 a California Corporation, qualified to do business in California, and doing business in the  
5 State of California at all relevant times herein.

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

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

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

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

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

3 **JURISDICTION**

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

21 **BACKGROUND AND PRELIMINARY FACTS**

- 22 11. In 1986, California voters approved an initiative to address growing concerns about  
23 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to  
24 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,  
25 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
26 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code Sections  
27 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources  
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1 from contamination, to allow consumers to make informed choices about the products  
2 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
3 fit.

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

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

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

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

26 16. On October 1, 1987 the Governor of California added Cadmium and Cadmium  
27 Compounds (“Cadmium”) to the list of chemicals known to the State to cause cancer

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1 (Cal. Code Regs. tit. 27, § 27001(b)). Pursuant to Health and Safety Code Sections  
2 25249.9 and 25249.10, twenty (20) months after addition of Cadmium to the list of  
3 chemicals known to the State to cause cancer, Cadmium became fully subject to  
4 Proposition 65 warning requirements and discharge prohibitions.

5 17. On May 1, 1997, the Governor of California added Cadmium to the list of chemicals  
6 known to the State to cause developmental and reproductive toxicity (Cal. Code Regs.  
7 tit. 27, § 27001(c)). Cadmium is known to the State to cause developmental, and male  
8 reproductive toxicity. Pursuant to Health and Safety Code Sections 25249.9 and  
9 25249.10, twenty (20) months after addition of Cadmium to the list of chemicals known  
10 to the State to cause developmental and reproductive toxicity, Cadmium became fully  
11 subject to Proposition 65 warning requirements and discharge prohibitions.

12 **SATISFACTION OF PRIOR NOTICE**

13 18. Plaintiff served the following notices for alleged violations of Health and Safety Code  
14 Section 25249.6, concerning consumer products exposures:

15 a. On or about August 18, 2022, Plaintiff gave notice of alleged violations of  
16 Health and Safety Code Section 25249.6, concerning consumer products  
17 exposures subject to a private action to EASTLAND FOOD, and to the  
18 California Attorney General, County District Attorneys, and City Attorneys for  
19 each city containing a population of at least 750,000 people in whose  
20 jurisdictions the violations allegedly occurred, concerning the Dried Seasoned  
21 Squid.

22 19. Before sending the notice of alleged violations, Plaintiff investigated the consumer  
23 products involved, the likelihood that such products would cause users to suffer  
24 significant exposures to Cadmium, and the corporate structure of each of the Defendants.

25 20. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the  
26 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for  
27 Plaintiff who executed the certificate had consulted with at least one person with relevant  
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1 and appropriate expertise who reviewed data regarding the exposures to Cadmium, the  
2 subject Proposition 65-listed chemical of this action. Based on that information, the  
3 attorney for Plaintiff who executed the Certificate of Merit believed there was a  
4 reasonable and meritorious case for this private action. The attorney for Plaintiff  
5 attached to the Certificate of Merit served on the Attorney General the confidential  
6 factual information sufficient to establish the basis of the Certificate of Merit.

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

10 22. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
11 gave notice of the alleged violations to EASTLAND FOOD, and the public prosecutors  
12 referenced in Paragraph 18.

13 23. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor  
14 any applicable district attorney or city attorney has commenced and is diligently  
15 prosecuting an action against the Defendants.

### 16 **FIRST CAUSE OF ACTION**

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

### 20 **Seafood Product**

21 24. Plaintiff repeats and incorporates by reference paragraphs 1 through 23 of this complaint  
22 as though fully set forth herein.

23 25. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
24 distributor, promoter, or retailer of Dried Seasoned Squid ("Dried Squid"), including but  
25 not limited to "Mr. Squid"; "Rolled Seasoned Squid"; "Net Wt. 1.06 oz (30 g)";  
26 "Distributed By Eastland Food Corporation"; "BBE 06/02/2022"; "Product of Thailand";  
27 "UPC 8 852861 002011".

28 26. Dried Squid contains Cadmium.

1 27. Defendants knew or should have known that Cadmium has been identified by the State  
2 of California as a chemical known to cause cancer, and reproductive toxicity and  
3 therefore was subject to Proposition 65 warning requirements. Defendants were also  
4 informed of the presence of Cadmium in Dried Squid within Plaintiff's notice of alleged  
5 violations further discussed above at Paragraph 18a.

6 28. Plaintiff's allegations regarding Dried Squid concerns "[c]onsumer products  
7 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,  
8 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
9 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*  
10 *25602(b)*. Dried Squid are consumer products, and, as mentioned herein, exposures to  
11 Relevant Chemical took place as a result of such normal and foreseeable consumption  
12 and use.

13 29. Plaintiff is informed, believes, and thereon alleges that between August 18, 2019 and the  
14 present, each of the Defendants knowingly and intentionally exposed California  
15 consumers and users of Dried Squid, which Defendants manufactured, distributed, or  
16 sold as mentioned above, to Cadmium, without first providing any type of clear and  
17 reasonable warning of such to the exposed persons before the time of exposure.  
18 Defendants have distributed and sold Dried Squid in California. Defendants know and  
19 intend that California consumers will use and consume Dried Squid, thereby exposing  
20 them to Cadmium. Further, Plaintiff is informed, believes, and thereon alleges that  
21 Defendants are selling Product under a brand or trademark that is owned or licensed by  
22 the Defendants or an entity affiliated thereto; have knowingly introduced Cadmium into  
23 product or knowingly caused Cadmium to be created in Dried Squid; have covered,  
24 obscured or altered a warning label that has been affixed to Dried Squid by the  
25 manufacturer, producer, packager, importer, supplier or distributor of Dried Squid; have  
26 received a notice and warning materials for exposure from Dried Squid without  
27 conspicuously posting or displaying the warning materials; and/or have actual

1 knowledge of potential exposure to Cadmium from Dried Squid. Defendants thereby  
2 violated Proposition 65.

3 30. The principal routes of exposure are through ingestion, especially direct (oral) ingestion,  
4 inhalation, and trans-dermal absorption. Persons sustain exposures primarily by eating  
5 and consuming Dried Squid, and additionally by handling Dried Squid without wearing  
6 gloves or any other personal protective equipment, or by touching bare skin or mucous  
7 membranes with gloves after handling Dried Squid, as well as through direct and indirect  
8 hand to mouth contact, hand to mucous membrane, or even breathing in particulate  
9 matter dispersed from Dried Squid.

10 31. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
11 Proposition 65 as to Dried Squid have been ongoing and continuous, as Defendants  
12 engaged and continue to engage in conduct which violates Health and Safety Code  
13 Section 25249.6, including the manufacture, distribution, promotion, and sale of Dried  
14 Squid, so that a separate and distinct violation of Proposition 65 occurred each and every  
15 time a person was exposed to Cadmium by Dried Squid as mentioned herein.

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

19 33. Based on the allegations herein, Defendants are liable for civil penalties of up to  
20 \$2,500.00 per day per individual exposure to Cadmium from Dried Squid, pursuant to  
21 Health and Safety Code Section 25249.7(b).

22 34. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
23 filing this Complaint.

24 **PRAYER FOR RELIEF**

25 Plaintiff demands against each of the Defendants as follows:

26 35. A permanent injunction mandating Proposition 65-compliant warnings;

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

28 37. Costs of suit;



1 38. Reasonable attorney fees and costs; and

2 39. Any further relief that the court may deem just and equitable.

3  
4 Dated: August 21, 2023

YEROUSHALMI & YEROUSHALMI\*

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6 *Reuben Yeroushalmi*  
7 \_\_\_\_\_  
8 Reuben Yeroushalmi  
9 Attorney for Plaintiff,  
10 CONSUMER ADVOCACY GROUP, INC.  
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