

Chad Finke, Executive Officer / Clerk of the Court  
By:           M. Cortez           Deputy

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9 CONSUMER ADVOCACY GROUP, INC.

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF ALAMEDA**

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

15 Plaintiff,

16 v.

17 G.L. FOOD WHOLESALERS, INC., a  
18 California Corporation;  
19 ASIA PACIFIC GROCERS, LLC. DBA  
20 JUST ASIAN FOOD, a New Jersey Limited  
21 Liability Company;  
22 and DOES 1-20,

23 Defendants.

CASE NO. **23CV043698**

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)

24 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges two causes of action  
25 against defendants G.L. FOOD WHOLESALERS, INC; ASIA PACIFIC GROCERS, LLC.  
26 DBA JUST ASIAN FOOD, and DOES 1-20 as follows:

27 **THE PARTIES**

- 1 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an  
2 organization qualified to do business in the State of California. CAG is a person within  
3 the meaning of Health and Safety Code Section 25249.11, subdivision (a). CAG, acting  
4 as a private attorney general, brings this action in the public interest as defined under  
5 Health and Safety Code Section 25249.7, subdivision (d).
- 6 2. Defendant G.L. FOOD WHOLESALERS, INC (“GL FOOD”) is a California Company  
7 qualified to do business in California, and doing business in the State of California at all  
8 relevant times herein.
- 9 3. Defendant ASIA PACIFIC GROCERS, LLC. DBA JUST ASIAN FOOD (“ASIA  
10 PACIFIC”) is a New Jersey limited liability company, doing business in the State of  
11 California at all relevant times herein.
- 12 4. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20,  
13 and therefore sues these defendants by such fictitious names. Plaintiff will amend this  
14 Complaint to allege their true names and capacities when ascertained. Plaintiff is  
15 informed, believes, and thereon alleges that each fictitiously named defendant is  
16 responsible in some manner for the occurrences herein alleged and the damages caused  
17 thereby.
- 18 5. At all times mentioned herein, the term “Defendants” includes GL FOOD, ASIA  
19 PACIFIC, and DOES 1-20.
- 20 6. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all  
21 times mentioned herein have conducted business within the State of California.
- 22 7. Upon information and belief, at all times relevant to this action, each of the Defendants,  
23 including DOES 1-20, was an agent, servant, or employee of each of the other  
24 Defendants. In conducting the activities alleged in this Complaint, each of the  
25 Defendants was acting within the course and scope of this agency, service, or  
26 employment, and was acting with the consent, permission, and authorization of each of  
27 the other Defendants. All actions of each of the Defendants alleged in this Complaint  
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1 were ratified and approved by every other Defendant or their officers or managing  
2 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the  
3 alleged wrongful conduct of each of the other Defendants.

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

### 8 **JURISDICTION**

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

### 26 **BACKGROUND AND PRELIMINARY FACTS**

- 1 12. In 1986, California voters approved an initiative to address growing concerns about  
2 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to  
3 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,  
4 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
5 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code Sections  
6 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources  
7 from contamination, to allow consumers to make informed choices about the products  
8 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
9 fit.
- 10 13. Proposition 65 requires the Governor of California to publish a list of chemicals known  
11 to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*  
12 *Code* § 25249.8. The list, which the Governor updates at least once a year, contains over  
13 700 chemicals and chemical families. Proposition 65 imposes warning requirements and  
14 other controls that apply to Proposition 65-listed chemicals.
- 15 14. All businesses with ten (10) or more employees that operate or sell products in California  
16 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited  
17 from knowingly discharging Proposition 65-listed chemicals into sources of drinking  
18 water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and  
19 reasonable” warnings before exposing a person, knowingly and intentionally, to a  
20 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).
- 21 15. Proposition 65 provides that any person "violating or threatening to violate" the statute  
22 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §  
23 25249.7. "Threaten to violate" means "to create a condition in which there is a  
24 substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).  
25 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,  
26 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

1 16. Plaintiff identified certain practices of manufacturers and distributors of Dried Mackerel  
2 and Smoked Fishflakes of exposing, knowingly and intentionally, persons in California  
3 to Lead and Lead Compounds of such products without first providing clear and  
4 reasonable warnings of such to the exposed persons prior to the time of exposure.  
5 Plaintiff later discerned that Defendants engaged in such practice.

6 17. On October 1, 1992 the Governor of California added Lead and Lead Compounds  
7 (“Lead”) to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit.  
8 27, § 27001(b)). Pursuant to Health and Safety Code Sections 25249.9 and 25249.10,  
9 twenty (20) months after addition of Lead to the list of chemicals known to the State to  
10 cause cancer, Lead became fully subject to Proposition 65 warning requirements and  
11 discharge prohibitions.

12 18. On February 27, 1987, the Governor of California added Lead to the list of chemicals  
13 known to the State to cause developmental and reproductive toxicity (*Cal. Code Regs.*  
14 tit. 27, § 27001(c)). Lead is known to the State to cause developmental, female, and  
15 male reproductive toxicity. Pursuant to Health and Safety Code Sections 25249.9 and  
16 25249.10, twenty (20) months after addition of Lead to the list of chemicals known to  
17 the State to cause developmental and reproductive toxicity, Lead became fully subject to  
18 Proposition 65 warning requirements and discharge prohibitions.

19 **SATISFACTION OF PRIOR NOTICE**

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

- 22 a. On or about October 13, 2022, Plaintiff gave notice of alleged violations of  
23 Health and Safety Code Section 25249.6, concerning consumer products  
24 exposures subject to a private action to GL FOOD, ASIA PACIFIC, and to the  
25 California Attorney General, County District Attorneys, and City Attorneys for  
26 each city containing a population of at least 750,000 people in whose  
27 jurisdictions the violations allegedly occurred, concerning the Dried Mackerel.

1           b. On or about October 25, 2022, Plaintiff gave notice of alleged violations of  
2           Health and Safety Code Section 25249.6, concerning consumer products  
3           exposures subject to a private action to GL FOOD and to the California  
4           Attorney General, County District Attorneys, and City Attorneys for each city  
5           containing a population of at least 750,000 people in whose jurisdictions the  
6           violations allegedly occurred, concerning the Smoked Fishflakes.

7           20. 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 the corporate structure of each of the Defendants.

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

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

22          23. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
23          gave notice of the alleged violations to GL FOOD, ASIA PACIFIC, and the public  
24          prosecutors referenced in Paragraph 19.

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

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1 **FIRST CAUSE OF ACTION**

2 **(By CONSUMER ADVOCACY GROUP, INC. and against GL FOOD, ASIA**  
3 **PACIFIC, and DOES 1-10 for Violations of Proposition 65, The Safe Drinking**  
4 **Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et***  
5 ***seq.*))**

6 **Seafood Product**

7 25. Plaintiff repeats and incorporates by reference paragraphs 1 through 24 of this complaint  
8 as though fully set forth herein.

9 26. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
10 distributor, promoter, or retailer of Dried Mackerel (“Dried Mackerel”), including but  
11 not limited or identified as "Lucia"; "GL"; "Dried Salted Indian Mackerel (Hasa-Hasa)  
12 Butterfly-Cut"; "Net Wt. 227g (8 oz)"; "Product of the Philippines"; "Distributed and  
13 Imported by GL Food Wholesale, Inc."; "UPC 4 085616 252100".

14 27. Dried Mackerel contains Lead.

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

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

26 30. Plaintiff is informed, believes, and thereon alleges that between October 13, 2019 and  
27 the present, each of the Defendants knowingly and intentionally exposed California  
28 consumers and users of Dried Mackerel, which Defendants manufactured, distributed, or  
sold as mentioned above, to Lead, without first providing any type of clear and

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

14 31. The principal routes of exposure are through direct oral ingestion and inhalation.  
15 Persons sustain exposures by eating and consuming Dried Mackerel and using without  
16 wearing gloves or any other personal protective equipment, or by touching bare skin or  
17 mucous membranes with gloves after handling Dried Mackerel, as well as through direct  
18 and indirect hand to mouth contact, hand to mucous membrane, or breathing in  
19 particulate matter dispersed from Dried Mackerel.

20 32. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
21 Proposition 65 as to Dried Mackerel have been ongoing and continuous, as Defendants  
22 engaged and continue to engage in conduct which violates Health and Safety Code  
23 Section 25249.6, including the manufacture, distribution, promotion, and sale of Dried  
24 Mackerel, so that a separate and distinct violation of Proposition 65 occurred each and  
25 every time a person was exposed to Lead by Dried Mackerel as mentioned herein.  
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1 33. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
2 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
3 violations alleged herein will continue to occur into the future.

4 34. Based on the allegations herein, Defendants are liable for civil penalties of up to  
5 \$2,500.00 per day per individual exposure to Lead from Dried Mackerel, pursuant to  
6 Health and Safety Code Section 25249.7(b).

7 35. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
8 filing this Complaint.

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10 **SECOND CAUSE OF ACTION**

11 **(By CONSUMER ADVOCACY GROUP, INC. and against GL FOOD and DOES**  
12 **11-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic**  
13 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

14 **Seafood Product**

15 36. Plaintiff repeats and incorporates by reference paragraphs 1 through 24 of this complaint  
16 as though fully set forth herein.

17 37. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
18 distributor, promoter, or retailer of Smoked Fishflakes (“Smoked Fishflakes”), including  
19 but not limited or identified as "Lucia"; "GL"; "Smoked Fishflakes"; "Galunggong  
20 Flakes"; "Net Wt. 113 g (4 oz.)"; "Product of Philippines"; "Distributed and Imported by  
21 GL Food Wholesale, Inc."; "UPC 4 085616 252278".

22 38. Smoked Fishflakes contains Lead.

23 39. Defendants knew or should have known that Lead has been identified by the State of  
24 California as a chemical known to cause cancer, and reproductive toxicity and therefore  
25 was subject to Proposition 65 warning requirements. Defendants were also informed of  
26 the presence of Lead in Smoked Fishflakes within Plaintiff's notice of alleged violations  
27 further discussed above at Paragraph 19b.

28 40. Plaintiff's allegations regarding Smoked Fishflakes concerns “[c]onsumer products  
exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,

1 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
2 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*  
3 *25602(b)*. Smoked Fishflakes are consumer products, and, as mentioned herein,  
4 exposures to Lead took place as a result of such normal and foreseeable consumption and  
5 use.

6 41. Plaintiff is informed, believes, and thereon alleges that between October 25, 2019 and  
7 the present, each of the Defendants knowingly and intentionally exposed California  
8 consumers and users of Smoked Fishflakes, which Defendants manufactured, distributed,  
9 or sold as mentioned above, to Lead, without first providing any type of clear and  
10 reasonable warning of such to the exposed persons before the time of exposure.  
11 Defendants have distributed and sold Smoked Fishflakes in California. Defendants  
12 know and intend that California consumers will use and consume Smoked Fishflakes,  
13 thereby exposing them to Lead. Further, Plaintiff is  
14 informed, believes, and thereon alleges that Defendants are selling Smoked Fishflakes  
15 under a brand or trademark that is owned or licensed by the Defendants or an entity  
16 affiliated thereto; have knowingly introduced Lead into Smoked Fishflakes or knowingly  
17 caused Lead to be created in Smoked Fishflakes; have covered, obscured or altered a  
18 warning label that has been affixed to Smoked Fishflakes by the manufacturer, producer,  
19 packager, importer, supplier or distributor of Smoked Fishflakes; have received a notice  
20 and warning materials for exposure from Smoked Fishflakes without conspicuously  
21 posting or displaying the warning materials; and/or have actual knowledge of potential  
22 exposure to Lead from Smoked Fishflakes. Defendants thereby violated Proposition 65.

23 42. The principal routes of exposure are through direct (oral) ingestion and inhalation.  
24 Persons sustain exposures by eating and consuming Smoked Fishflakes and handling  
25 without wearing gloves or any other personal protective equipment, or by touching bare  
26 skin or mucous membranes with gloves after handling Smoked Fishflakes, as well as  
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1 through direct and indirect hand to mouth contact, hand to mucous membrane, or  
2 breathing in particulate matter dispersed from Smoked Fishflakes.

3 43. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
4 Proposition 65 as to Smoked Fishflakes have been ongoing and continuous, as  
5 Defendants engaged and continue to engage in conduct which violates Health and Safety  
6 Code Section 25249.6, including the manufacture, distribution, promotion, and sale of  
7 Smoked Fishflakes, so that a separate and distinct violation of Proposition 65 occurred  
8 each and every time a person was exposed to Lead by Smoked Fishflakes as mentioned  
9 herein.

10 44. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
11 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
12 violations alleged herein will continue to occur into the future.

13 45. Based on the allegations herein, Defendants are liable for civil penalties of up to  
14 \$2,500.00 per day per individual exposure to Lead from Smoked Fishflakes, pursuant to  
15 Health and Safety Code Section 25249.7(b).

16 46. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
17 filing this Complaint.

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20 **PRAYER FOR RELIEF**

21 Plaintiff demands against each of the Defendants as follows:

- 22 48. A permanent injunction mandating Proposition 65-compliant warnings;  
23 49. Penalties pursuant to Health and Safety Code Section 25249.7, subdivision (b);  
24 50. Costs of suit;  
25 51. Reasonable attorney fees and costs; and  
26 52. Any further relief that the court may deem just and equitable.

1 Dated: September 12, 2023

YEROUSHALMI & YEROUSHALMI\*

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4 *Reuben Yeroushalmi*

Reuben Yeroushalmi  
Attorneys for Plaintiff,  
CONSUMER ADVOCACY GROUP, INC.

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