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Chad Finke, Executive Officer / Clerk of the Court

By: D. Franklin Deputy

1 Reuben Yeroushalmi (SBN 193981)
2 reuben@yeroshalmi.com
3 **YERUSHALMI & YERUSHALMI***
4 9100 Wilshire Boulevard, Suite 240W
5 Beverly Hills, California 90212
6 Telephone: (310) 623-1926
7 Facsimile: (310) 623-1930
8
9 Attorneys for Plaintiff,
10 CONSUMER ADVOCACY GROUP, INC.

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **COUNTY OF ALAMEDA**

9 CONSUMER ADVOCACY GROUP, INC.,
10 in the public interest,
11
12 Plaintiff,
13
14 v.
15 G.L. FOOD WHOLESALE INC., a
16 Delaware Corporation;
17 and DOES 1-10,
18
19 Defendants.

CASE NO. 22CV024436

FIRST AMENDED 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 \$35,000)

26
27 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges six causes of action against
28 defendants G.L. FOOD WHOLESALE INC. and DOES 1-10 as follows:

THE PARTIES

1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an organization qualified to do business in the State of California. CAG is a person within the meaning of Health and Safety Code Section 25249.11, subdivision (a). CAG, acting as a private attorney general, brings this action in the public interest as defined under Health and Safety Code Section 25249.7, subdivision (d).
2. Defendant G.L. FOOD WHOLESALE INC. (“G.L. FOOD”) is a California Corporation doing business in the State of California at all relevant times herein.
3. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-10, and therefore sues these defendants by such fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when 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 thereby.
4. At all times mentioned herein, the term “Defendants” includes G.L. FOOD and DOES 1-10.
5. 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.
6. Upon information and belief, at all times relevant to this action, each of the Defendants, including DOES 1-10, was an agent, servant, or employee of each of the other Defendants. In conducting the activities alleged in this Complaint, each of the Defendants was acting within the course and scope of this agency, service, or employment, and was acting with the consent, permission, and authorization of each of the other Defendants. All actions of each of the Defendants alleged in this Complaint were ratified and approved by every other Defendant or their officers or managing agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged wrongful conduct of each of the other Defendants.

1 7. 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 8. 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 9. 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 10. 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 11. 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
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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 12. 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 13. 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 14. 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 15. 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, 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.

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1 16. 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 17. 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 18. 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 19. 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 20. 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 May 12, 2022, Plaintiff gave notice of alleged violations of Health
4 and Safety Code Section 25249.6, concerning consumer products exposures
5 subject to a private action to G.L. FOOD, and to the California Attorney
6 General, County District Attorneys, and City Attorneys for each city containing
7 a population of at least 750,000 people in whose jurisdictions the violations
8 allegedly occurred, concerning the Dried Anchovy.
- 9 b. On or about October 13, 2022, Plaintiff gave notice of alleged violations of
10 Health and Safety Code Section 25249.6, concerning consumer products
11 exposures subject to a private action to G.L. FOOD, and to the California
12 Attorney General, County District Attorneys, and City Attorneys for each city
13 containing a population of at least 750,000 people in whose jurisdictions the
14 violations allegedly occurred, concerning the Dried Mackerel I.
- 15 c. On or about October 25, 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 G.L. FOOD, and to the California
18 Attorney General, County District Attorneys, and City Attorneys for each city
19 containing a population of at least 750,000 people in whose jurisdictions the
20 violations allegedly occurred, concerning the Smoked Fishflakes.
- 21 d. On or about July 29, 2024, Plaintiff gave notice of alleged violations of Health
22 and Safety Code Section 25249.6, concerning consumer products exposures
23 subject to a private action to G.L. FOOD, and to the California Attorney
24 General, County District Attorneys, and City Attorneys for each city containing
25 a population of at least 750,000 people in whose jurisdictions the violations
26 allegedly occurred, concerning the Dried Rabbitfish and Dried Threadfin Bream.

- 1 e. On or about August 27, 2024, 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 G.L. 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 Dried Mackerel II.
- 7 f. On or about September 3, 2024, Plaintiff gave notice of alleged violations of
8 Health and Safety Code Section 25249.6, concerning consumer products
9 exposures subject to a private action to G.L. FOOD, and to the California
10 Attorney General, County District Attorneys, and City Attorneys for each city
11 containing a population of at least 750,000 people in whose jurisdictions the
12 violations allegedly occurred, concerning the Dried Mackerel II.
- 13 g. On or about October 4, 2024, Plaintiff gave notice of alleged violations of
14 Health and Safety Code Section 25249.6, concerning consumer products
15 exposures subject to a private action to G.L. FOOD, and to the California
16 Attorney General, County District Attorneys, and City Attorneys for each city
17 containing a population of at least 750,000 people in whose jurisdictions the
18 violations allegedly occurred, concerning the Dried Rabbitfish and Dried
19 Threadfin Bream.

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

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

7 23. 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 24. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
11 gave notice of the alleged violations to G.L. FOOD, and the public prosecutors
12 referenced in Paragraph 20.

13 25. 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 for the violations alleged in the Notices.

16 **FIRST CAUSE OF ACTION**

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

20 **Dried Anchovy**

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

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

28 28. Anchovy contains Lead and Cadmium.

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

6 30. Plaintiff's allegations regarding Anchovy concerns "[c]onsumer products exposure[s],"
7 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
9 that results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*.

10 Anchovy is consumer products, and, as mentioned herein, exposures to Lead and
11 Cadmium took place as a result of such normal and foreseeable consumption and use.

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

17 Defendants have distributed and sold Anchovy in California. Defendants know and
18 intend that California consumers will use and consume Anchovy, thereby exposing them
19 to Lead and Cadmium. Further, Plaintiff is informed, believes, and thereon alleges that
20 Defendants are selling Anchovy under a brand or trademark that is owned or licensed by
21 the Defendants or an entity affiliated thereto; have knowingly introduced Lead and
22 Cadmium into Anchovy or knowingly caused Lead and Cadmium to be created in
23 Anchovy; have covered, obscured or altered a warning label that has been affixed to
24 Anchovy by the manufacturer, producer, packager, importer, supplier or distributor of
25 Anchovy; have received a notice and warning materials for exposure from Anchovy
26 without conspicuously posting or displaying the warning materials; and/or have actual

1 knowledge of potential exposure to Lead and Cadmium from Anchovy. Defendants
2 thereby violated Proposition 65.

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

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

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

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

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

23 **SECOND CAUSE OF ACTION**

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

27 **Dried Mackerel I**

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

3 38. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
4 distributor, promoter, or retailer of Dried Mackerel (“Dried Mackerel I”), including but
5 not limited to "Lucia"; "GL"; "Dried Salted Indian Mackerel (Hasa-Hasa) Butterfly-Cut";
6 "Net Wt. 227g (8 oz)"; "Product of the Philippines"; "Distributed and Imported by GL
7 Food Wholesale, Inc."; "UPC 4 085616 252100".

8 39. Dried Mackerel I contains Lead.

9 40. Defendants knew or should have known that Lead has been identified by the State of
10 California as a chemical known to cause cancer, and reproductive toxicity and therefore
11 was subject to Proposition 65 warning requirements. Defendants were also informed of
12 the presence of Lead in Dried Mackerel I within Plaintiff's notice of alleged violations
13 further discussed above at Paragraph 20b.

14 41. Plaintiff’s allegations regarding Dried Mackerel I concerns “[c]onsumer products
15 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,
16 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
17 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*
18 *25602(b)*. Dried Mackerel I are consumer products, and, as mentioned herein, exposures
19 to Lead took place as a result of such normal and foreseeable consumption and use.

20 42. Plaintiff is informed, believes, and thereon alleges that between October 13, 2019 and
21 the present, each of the Defendants knowingly and intentionally exposed California
22 consumers and users of Dried Mackerel I, which Defendants manufactured, distributed,
23 or sold as mentioned above, to Lead, without first providing any type of clear and
24 reasonable warning of such to the exposed persons before the time of exposure.

25 Defendants have distributed and sold Dried Mackerel I in California. Defendants know
26 and intend that California consumers will use and consume Dried Mackerel I, thereby
27 exposing them to Lead. Further, Plaintiff is informed, believes, and thereon alleges that

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1 Defendants are selling Dried Mackerel I under a brand or trademark that is owned or
2 licensed by the Defendants or an entity affiliated thereto; have knowingly introduced
3 Lead into Dried Mackerel I or knowingly caused Lead to be created in Dried Mackerel I;
4 have covered, obscured or altered a warning label that has been affixed to Dried
5 Mackerel I by the manufacturer, producer, packager, importer, supplier or distributor of
6 Dried Mackerel I; have received a notice and warning materials for exposure from Dried
7 Mackerel I without conspicuously posting or displaying the warning materials; and/or
8 have actual knowledge of potential exposure to Lead from Dried Mackerel I. Defendants
9 thereby violated Proposition 65.

10 43. The principal routes of exposure are through direct oral ingestion and inhalation.

11 Persons sustain exposures by eating and consuming Dried Mackerel I and using without
12 wearing gloves or any other personal protective equipment, or by touching bare skin or
13 mucous membranes with gloves after handling Dried Mackerel I, as well as through
14 direct and indirect hand to mouth contact, hand to mucous membrane, or breathing in
15 particulate matter dispersed from Dried Mackerel I.

16 44. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
17 Proposition 65 as to Dried Mackerel I have been ongoing and continuous, as Defendants
18 engaged and continue to engage in conduct which violates Health and Safety Code
19 Section 25249.6, including the manufacture, distribution, promotion, and sale of Dried
20 Mackerel I, so that a separate and distinct violation of Proposition 65 occurred each and
21 every time a person was exposed to Lead by Dried Mackerel I as mentioned herein.

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

25 46. Based on the allegations herein, Defendants are liable for civil penalties of up to
26 \$2,500.00 per day per individual exposure to Lead from Dried Mackerel I, pursuant to
27 Health and Safety Code Section 25249.7(b).

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1 47. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
2 filing this Complaint.

3 **THIRD CAUSE OF ACTION**

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

7 **Smoked Fishflakes**

8 48. Plaintiff repeats and incorporates by reference paragraphs 1 through 47 of this complaint
9 as though fully set forth herein.

10 49. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
11 distributor, promoter, or retailer of Smoked Fishflakes, including but not limited to
12 "Lucia"; "GL"; "Smoked Fishflakes"; "Galunggong Flakes"; "Net Wt. 113 g (4 oz.);"
13 "Product of Philippines"; "Distributed and Imported by GL Food Wholesale, Inc."; "UPC
14 4 085616 252278".

15 50. Smoked Fishflakes contains Lead.

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

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

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

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

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

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

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

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

12 **FOURTH CAUSE OF ACTION**

13 **(By CONSUMER ADVOCACY GROUP, INC. and against GL FOOD, and DOES**
14 **1-10 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
15 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

16 **Dried Rabbitfish**

17 59. Plaintiff repeats and incorporates by reference paragraphs 1 through 58 of this complaint
18 as though fully set forth herein.

19 60. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
20 distributor, promoter, or retailer of Dried Rabbitfish, including but not limited to:
21 “Lucia”; “GL”; “PRODUCT OF THE PHILIPPINES”; “Dried Salted Rabbitfish
22 (Danggit) Butterfly-Cut”; “Net Wt. 113g (4 oz.)”; “Distributed and Imported by: GL
23 FOOD WHOLESALE, INC.”; “UPC 4085616252247”

24 61. Dried Rabbitfish contains Cadmium.

25 62. Defendants knew or should have known that Cadmium has been identified by the State
26 of California as a chemical known to cause reproductive toxicity and therefore was
27 subject to Proposition 65 warning requirements. Defendants were also informed of the
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1 presence of Cadmium in Dried Rabbitfish within Plaintiff's notice of alleged violations
2 further discussed above at Paragraph 20d and 20g.

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

9 64. Plaintiff is informed, believes, and thereon alleges that between July 29, 2021 and the
10 present, each of the Defendants knowingly and intentionally exposed California
11 consumers and users of Dried Rabbitfish, which Defendants manufactured, distributed,
12 or sold as mentioned above, to Cadmium, without first providing any type of clear and
13 reasonable warning of such to the exposed persons before the time of exposure.
14 Defendants have distributed and sold Dried Rabbitfish in California. Defendants know
15 and intend that California consumers will use and consume Dried Rabbitfish, thereby
16 exposing them to Cadmium. Further, Plaintiff is informed, believes, and thereon alleges
17 that Defendants are selling Dried Rabbitfish under a brand or trademark that is owned or
18 licensed by the Defendants or an entity affiliated thereto; have knowingly introduced
19 Cadmium into Dried Rabbitfish or knowingly caused Cadmium to be created in Dried
20 Rabbitfish; have covered, obscured or altered a warning label that has been affixed to
21 Dried Rabbitfish by the manufacturer, producer, packager, importer, supplier or
22 distributor of Dried Rabbitfish; have received a notice and warning materials for
23 exposure from Dried Rabbitfish without conspicuously posting or displaying the warning
24 materials; and/or have actual knowledge of potential exposure to Cadmium from Dried
25 Rabbitfish. Defendants thereby violated Proposition 65.

26 65. The principal routes of exposure were through ingestion, dermal contact, and inhalation.
27 Persons sustain exposures by eating, mixing, or handling the Dried Rabbitfish without
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1 wearing gloves or by touching bare skin or mucous membranes with or without gloves
2 after handling Dried Rabbitfish, as well as direct and indirect hand to mouth contact,
3 hand to mucous membrane, trans-dermal absorption, or breathing in particulate matter
4 emanating from the Dried Rabbitfish during use, as well as through environmental
5 mediums that carry the Cadmium once contained within the Dried Rabbitfish and Dried
6 Rabbitfish.

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

13 67. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
14 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
15 violations alleged herein will continue to occur into the future.

16 68. Based on the allegations herein, Defendants are liable for civil penalties of up to
17 \$2,500.00 per day per individual exposure to Cadmium from Dried Rabbitfish, pursuant
18 to Health and Safety Code Section 25249.7(b).

19 69. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
20 filing this Complaint.

21 **FIFTH CAUSE OF ACTION**

22 **(By CONSUMER ADVOCACY GROUP, INC. and against GL FOOD, and DOES**
23 **1-10 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
24 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

25 **Dried Threadfin Bream**

26 70. Plaintiff repeats and incorporates by reference paragraphs 1 through 69 of this complaint
27 as though fully set forth herein.

1 71. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
2 distributor, promoter, or retailer of Dried Threadfin Bream, including but not limited to:
3 “Lucia”; “GL”; “PRODUCT OF THE PHILIPPINES”; “Dried Salted Threadfin Bream
4 (Bisugo) Butterfly-Cut”; “Net Wt. 227g (8 oz.)”; “Distributed and Imported by: GL
5 FOOD WHOLESALE, INC.”; “UPC 4085616252032”

6 72. Dried Threadfin Bream contains Lead.

7 73. Defendants knew or should have known that Lead has been identified by the State of
8 California as a chemical known to cause cancer, and reproductive toxicity and therefore
9 was subject to Proposition 65 warning requirements. Defendants were also informed of
10 the presence of Lead in Dried Threadfin Bream within Plaintiff's notice of alleged
11 violations further discussed above at Paragraph 20d and 20g.

12 74. Plaintiff's allegations regarding Dried Threadfin Bream concerns “[c]onsumer products
13 exposure[s],” which “is an exposure that results from a person's acquisition, purchase,
14 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
15 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*
16 *25602(b)*. Dried Threadfin Bream are consumer products, and, as mentioned herein,
17 exposures to Lead took place as a result of such normal and foreseeable consumption and
18 use.

19 75. Plaintiff is informed, believes, and thereon alleges that between July 29, 2021 and the
20 present, each of the Defendants knowingly and intentionally exposed California
21 consumers and users of Dried Threadfin Bream, which Defendants manufactured,
22 distributed, or sold as mentioned above, to Lead, without first providing any type of clear
23 and reasonable warning of such to the exposed persons before the time of exposure.
24 Defendants have distributed and sold Dried Threadfin Bream in California. Defendants
25 know and intend that California consumers will use and consume Dried Threadfin
26 Bream, thereby exposing them to Lead. Further, Plaintiff is informed, believes, and
27 thereon alleges that Defendants are selling Dried Threadfin Bream under a brand or
28

1 trademark that is owned or licensed by the Defendants or an entity affiliated thereto;
2 have knowingly introduced Lead into Dried Threadfin Bream or knowingly caused Lead
3 to be created in Dried Threadfin Bream; have covered, obscured or altered a warning
4 label that has been affixed to Dried Threadfin Bream by the manufacturer, producer,
5 packager, importer, supplier or distributor of Dried Threadfin Bream; have received a
6 notice and warning materials for exposure from Dried Threadfin Bream without
7 conspicuously posting or displaying the warning materials; and/or have actual
8 knowledge of potential exposure to Lead from Dried Threadfin Bream. Defendants
9 thereby violated Proposition 65.

10 76. The principal routes of exposure were through ingestion, dermal contact, and inhalation.
11 Persons sustain exposures by eating, mixing, or handling the Dried Threadfin Bream
12 without wearing gloves or by touching bare skin or mucous membranes with or without
13 gloves after handling Dried Threadfin Bream, as well as direct and indirect hand to
14 mouth contact, hand to mucous membrane, trans-dermal absorption, or breathing in
15 particulate matter emanating from the Dried Threadfin Bream during use, as well as
16 through environmental mediums that carry the Lead once contained within the Dried
17 Rabbitfish and Dried Threadfin Bream.

18 77. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
19 Proposition 65 as to Dried Threadfin Bream have been ongoing and continuous, as
20 Defendants engaged and continue to engage in conduct which violates Health and Safety
21 Code Section 25249.6, including the manufacture, distribution, promotion, and sale of
22 Dried Threadfin Bream, so that a separate and distinct violation of Proposition 65
23 occurred each and every time a person was exposed to Lead by Dried Threadfin Bream
24 as mentioned herein.

25 78. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
26 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
27 violations alleged herein will continue to occur into the future.

28

1 79. Based on the allegations herein, Defendants are liable for civil penalties of up to
2 \$2,500.00 per day per individual exposure to Lead from Dried Threadfin Bream,
3 pursuant to Health and Safety Code Section 25249.7(b).

4 80. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
5 filing this Complaint.

6
7 **SIXTH CAUSE OF ACTION**

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

11 **Dried Mackerel II**

12 81. Plaintiff repeats and incorporates by reference paragraphs 1 through 80 of this complaint
13 as though fully set forth herein.

14 82. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
15 distributor, promoter, or retailer of Dried Mackerel (“Dried Mackerel II”), including but
16 not limited to: “Dried Indian Mackerel”; “WILD CAUGHT”; “Hasa Hasa”; “KAPUSO”;
17 “Imported for G L Food Wholesale Inc”; “UPC 8935091139129”; “PRODUCT OF
18 VIETNAM”; “NET WEIGHT: 8 oz *226gr”

19 83. Dried Mackerel II contains Lead.

20 84. Defendants knew or should have known that Lead has been identified by the State of
21 California as a chemical known to cause cancer, and reproductive toxicity and therefore
22 was subject to Proposition 65 warning requirements. Defendants were also informed of
23 the presence of Lead in Dried Mackerel II within Plaintiff's notice of alleged violations
24 further discussed above at Paragraph 20e and 20f.

25 85. Plaintiff's allegations regarding Dried Mackerel II concerns “[c]onsumer products
26 exposure[s],” which “is an exposure that results from a person's acquisition, purchase,
27 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
28 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*
25602(b). Dried Mackerel II are consumer products, and, as mentioned herein,

1 exposures to Lead took place as a result of such normal and foreseeable consumption and
2 use.

3 86. Plaintiff is informed, believes, and thereon alleges that between August 27, 2021 and the
4 present, each of the Defendants knowingly and intentionally exposed California
5 consumers and users of Dried Mackerel II, which Defendants manufactured, distributed,
6 or sold as mentioned above, to Lead, 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 Dried Mackerel II in California. Defendants know
9 and intend that California consumers will use and consume Dried Mackerel II, thereby
10 exposing them to Lead. Further, Plaintiff is informed, believes, and thereon alleges that
11 Defendants are selling Dried Mackerel II under a brand or trademark that is owned or
12 licensed by the Defendants or an entity affiliated thereto; have knowingly introduced
13 Lead into Dried Mackerel II or knowingly caused Lead to be created in Dried Mackerel
14 II; have covered, obscured or altered a warning label that has been affixed to Dried
15 Mackerel II by the manufacturer, producer, packager, importer, supplier or distributor of
16 Dried Mackerel II; have received a notice and warning materials for exposure from
17 Dried Mackerel II without conspicuously posting or displaying the warning materials;
18 and/or have actual knowledge of potential exposure to Lead from Dried Mackerel II.
19 Defendants thereby violated Proposition 65.

20 87. The principal routes of exposure were through ingestion, dermal contact, and inhalation.
21 Persons sustain exposures by eating, mixing, or handling the Dried Mackerel II without
22 wearing gloves or by touching bare skin or mucous membranes with or without gloves
23 after handling Dried Mackerel II, as well as direct and indirect hand to mouth contact,
24 hand to mucous membrane, trans-dermal absorption, or breathing in particulate matter
25 emanating from the Dried Mackerel II during use, as well as through environmental
26 mediums that carry the Lead once contained within the Dried Rabbitfish and Dried
27 Mackerel II.

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

7 89. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
8 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
9 violations alleged herein will continue to occur into the future.

10 90. Based on the allegations herein, Defendants are liable for civil penalties of up to
11 \$2,500.00 per day per individual exposure to Lead from Dried Mackerel II, pursuant to
12 Health and Safety Code Section 25249.7(b).

13 91. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
14 filing this Complaint.

15 **PRAYER FOR RELIEF**

16 Plaintiff demands against each of the Defendants as follows:

17 92. A permanent injunction mandating Proposition 65-compliant warnings;

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

19 94. Costs of suit;

20 95. Reasonable attorney fees and costs; and

21 96. Any further relief that the court may deem just and equitable.

22
23 Dated: February 18, 2025

YEROUSHALMI & YEROUSHALMI*

24
25 /s/ Reuben Yeroushalmi

26 Reuben Yeroushalmi
27 Attorneys for Plaintiff,
28 CONSUMER ADVOCACY GROUP, INC.