

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Michael Stern

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Attorneys for Plaintiff,

CONSUMER ADVOCACY GROUP, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

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

Plaintiff,

v.

PHILIPPINE FOODTRADE CORP., a
California Corporation;
SHUN FAT SUPERMARKET INC., a
California Corporation;
TRANS FAMILY, INC. DBA SAN
GABRIEL SUPERSTORE, a California
Corporation;
and DOES 1-50,

Defendants.

CASE NO. **23STCV03836**

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)

Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges five causes of action
against defendants PHILIPPINE FOODTRADE CORP.; SHUN FAT SUPERMARKET INC.;
TRANS FAMILY, INC. DBA SAN GABRIEL SUPERSTORE and DOES 1-50 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 PHILIPPINE FOODTRADE CORP. (“PHILIPPINE FOODTRADE”) is a California Corporation qualified to do business in California, and doing business in the State of California at all relevant times herein.
3. Defendant SHUN FAT SUPERMARKET INC. (“SHUN FAT”) is a California Corporation qualified to do business in California, and doing business in the State of California at all relevant times herein.
4. Defendant TRANS FAMILY, INC. DBA SAN GABRIEL SUPERSTORE (“SAN GABRIEL SUPERSTORE”) is a California Corporation qualified to do business in California, and doing business in the State of California at all relevant times herein.
5. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-50, 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.
6. At all times mentioned herein, the term “Defendants” includes PHILIPPINE FOODTRADE, SHUN FAT, SAN GABRIEL SUPERSTORE and DOES 1-50.
7. 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.
8. Upon information and belief, at all times relevant to this action, each of the Defendants, including DOES 1-50, was an agent, servant, or employee of each of the other

1 Defendants. In conducting the activities alleged in this Complaint, each of the
2 Defendants was acting within the course and scope of this agency, service, or
3 employment, and was acting with the consent, permission, and authorization of each of
4 the other Defendants. All actions of each of the Defendants alleged in this Complaint
5 were ratified and approved by every other Defendant or their officers or managing
6 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the
7 alleged wrongful conduct of each of the other Defendants.

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

12 **JURISDICTION**

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

3 **BACKGROUND AND PRELIMINARY FACTS**

4 13. In 1986, California voters approved an initiative to address growing concerns about
5 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to
6 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,
7 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
8 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code Sections
9 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources
10 from contamination, to allow consumers to make informed choices about the products
11 they buy, and to enable persons to protect themselves from toxic chemicals as they see
12 fit.

13 14. Proposition 65 requires the Governor of California to publish a list of chemicals known
14 to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*
15 *Code* § 25249.8. The list, which the Governor updates at least once a year, contains over
16 700 chemicals and chemical families. Proposition 65 imposes warning requirements and
17 other controls that apply to Proposition 65-listed chemicals.

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

24 16. Proposition 65 provides that any person "violating or threatening to violate" the statute
25 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §
26 25249.7. "Threaten to violate" means "to create a condition in which there is a
27 substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).

Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation, recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

17. Plaintiff identified certain practices of manufacturers and distributors of Food Products of exposing, knowingly and intentionally, persons in California to Lead and Lead Compounds, Cadmium and Cadmium Compounds, and Inorganic Arsenic Compounds, and/or Inorganic Arsenic Oxides of such products without first providing clear and reasonable warnings of such to the exposed persons prior to the time of exposure.

Plaintiff later discerned that Defendants engaged in such practice.

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

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

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

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

8 22. On May 1, 1997, the Governor of California added Inorganic Arsenic Oxides to the list
9 of chemicals known to the State to cause developmental toxicity (*Cal. Code Regs.* tit. 27,
10 § 27001(c)). Inorganic Arsenic Oxides is known to the State to cause developmental,
11 toxicity. Pursuant to Health and Safety Code Sections 25249.9 and 25249.10, twenty
12 (20) months after addition of Inorganic Arsenic Oxides to the list of chemicals known to
13 the State to cause developmental toxicity, Inorganic Arsenic Oxides became fully subject
14 to Proposition 65 warning requirements and discharge prohibitions. Inorganic Arsenic
15 Oxides is hereinafter referred to as “Arsenic”.

16 **SATISFACTION OF PRIOR NOTICE**

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

- 19 a. On or about November 15, 2022, Plaintiff gave notice of alleged violations of
20 Health and Safety Code Section 25249.6, concerning consumer products
21 exposures subject to a private action to PHILIPPINE FOODTRADE, SHUN
22 FAT, and to the California Attorney General, County District Attorneys, and
23 City Attorneys for each city containing a population of at least 750,000 people
24 in whose jurisdictions the violations allegedly occurred, concerning the Sardines
25 in Tomato Sauce.
- 26 b. On or about November 15, 2022, Plaintiff gave notice of alleged violations of
27 Health and Safety Code Section 25249.6, concerning consumer products
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1 exposures subject to a private action to PHILIPPINE FOODTRADE and to the
2 California Attorney General, County District Attorneys, and City Attorneys for
3 each city containing a population of at least 750,000 people in whose
4 jurisdictions the violations allegedly occurred, concerning the Dried Herring.

5 c. On or about November 28, 2022, Plaintiff gave notice of alleged violations of
6 Health and Safety Code Section 25249.6, concerning consumer products
7 exposures subject to a private action to PHILIPPINE FOODTRADE and to the
8 California Attorney General, County District Attorneys, and City Attorneys for
9 each city containing a population of at least 750,000 people in whose
10 jurisdictions the violations allegedly occurred, concerning the Dried Herring.

11 d. On or about November 28, 2022, Plaintiff gave notice of alleged violations of
12 Health and Safety Code Section 25249.6, concerning consumer products
13 exposures subject to a private action to PHILIPPINE FOODTRADE and to the
14 California Attorney General, County District Attorneys, and City Attorneys for
15 each city containing a population of at least 750,000 people in whose
16 jurisdictions the violations allegedly occurred, concerning the Sardines in
17 Tomato Sauce.

18 e. On or about December 16, 2022, Plaintiff gave notice of alleged violations of
19 Health and Safety Code Section 25249.6, concerning consumer products
20 exposures subject to a private action to PHILIPPINE FOODTRADE, SHUN
21 FAT, and to the California Attorney General, County District Attorneys, and
22 City Attorneys for each city containing a population of at least 750,000 people
23 in whose jurisdictions the violations allegedly occurred, concerning the Sardines
24 in Tomato Sauce.

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

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

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

27. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff gave notice of the alleged violations to PHILIPPINE FOODTRADE, SHUN FAT , SAN GABRIEL SUPERSTORE and the public prosecutors referenced in Paragraph 23.

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

FIRST CAUSE OF ACTION

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

Seafood Product I

1 29. Plaintiff repeats and incorporates by reference paragraphs 1 through 28 of this complaint
2 as though fully set forth herein.

3 30. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
4 distributor, promoter, or retailer of Sardines in Tomato Sauce ("Sardines I"), including
5 but not limited to "AI Tropics Since 1970"; "In Tomato Sauce Sardines"; "Net Wt. 5.5 oz
6 (155 g)"; "Distributed by Philippine Foodtrade Corp."; "Product of Philippines"; "Exp.
7 30 Jun 2023"; "TSTTA 300620 AD"; "UPC 0 30283 00212 5".

8 31. Sardines I contains Cadmium.

9 32. Defendants knew or should have known that Cadmium has been identified by the State
10 of California as a chemical known to cause cancer, and reproductive toxicity and
11 therefore was subject to Proposition 65 warning requirements. Defendants were also
12 informed of the presence of Cadmium in Sardines I within Plaintiff's notice of alleged
13 violations further discussed above at Paragraph 23a.

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

20 34. Plaintiff is informed, believes, and thereon alleges that between November 15, 2019 and
21 the present, each of the Defendants knowingly and intentionally exposed California
22 consumers and users of Sardines I, which Defendants manufactured, distributed, or sold
23 as mentioned above, to Cadmium, 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 Sardines I in California. Defendants know and
26 intend that California consumers will use and consume Sardines I, thereby exposing
27 them to Cadmium. Further, Plaintiff is informed, believes, and thereon alleges that
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1 Defendants are selling Sardines I under a brand or trademark that is owned or licensed
2 by the Defendants or an entity affiliated thereto; have knowingly introduced Cadmium
3 into product or knowingly caused Cadmium to be created in Sardines I; have covered,
4 obscured or altered a warning label that has been affixed to Sardines I by the
5 manufacturer, producer, packager, importer, supplier or distributor of Sardines I; have
6 received a notice and warning materials for exposure from Sardines I without
7 conspicuously posting or displaying the warning materials; and/or have actual
8 knowledge of potential exposure to Cadmium from Sardines I. Defendants thereby
9 violated Proposition 65.

10 35. The principal routes of exposure are through dermal contact, ingestion and inhalation.

11 Persons sustain exposures by eating and consuming Sardines I, as well as through direct
12 and indirect hand to mouth contact, hand to mucous membrane, or breathing in
13 particulate matter dispersed from Sardines I.

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

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

23 38. Based on the allegations herein, Defendants are liable for civil penalties of up to
24 \$2,500.00 per day per individual exposure to Cadmium from Sardines I, pursuant to
25 Health and Safety Code Section 25249.7(b).

26 39. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
27 filing this Complaint.

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1 **SECOND CAUSE OF ACTION**

2 **(By CONSUMER ADVOCACY GROUP, INC. and against PHILIPPINE**
3 **FOODTRADE and DOES 11-20 for Violations of Proposition 65, The Safe**
4 **Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§***
5 ***25249.5, et seq.*))**

6 **Seafood Product II**

7 40. Plaintiff repeats and incorporates by reference paragraphs 1 through 28 of this complaint
8 as though fully set forth herein.

9 41. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
10 distributor, promoter, or retailer of Dried Herring I, including but not limited to "AI
11 Tropics Since 1970"; "Dried Salted Herring Tunsoy"; "Net Wt. 6 oz (170 grams)";
12 "Product of the Philippines"; "Distributed by Philippine Foodtrade Corp. and Foodasia
13 International Corp."; "Lot No. 70217237 4904"; "UPC 0 30283 010076".

14 42. Dried Herring I contains Lead.

15 43. 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 Herring I within Plaintiff's notice of alleged violations
19 further discussed above at Paragraph 23b.

20 44. Plaintiff's allegations regarding Dried Herring I 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 Herring I is a consumer product, and, as mentioned herein, exposures to
25 Lead took place as a result of such normal and foreseeable consumption and use.

26 45. Plaintiff is informed, believes, and thereon alleges that between November 15, 2019 and
27 the present, each of the Defendants knowingly and intentionally exposed California
28 consumers and users of Dried Herring I, 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 Herring I in California. Defendants know
3 and intend that California consumers will use and consume Dried Herring I, thereby
4 exposing them to Lead. Further, Plaintiff is informed, believes, and thereon alleges that
5 Defendants are selling Dried Herring I under a brand or trademark that is owned or
6 licensed by the Defendants or an entity affiliated thereto; have knowingly introduced
7 Lead into product or knowingly caused Lead to be created in Dried Herring I; have
8 covered, obscured or altered a warning label that has been affixed to Dried Herring I by
9 the manufacturer, producer, packager, importer, supplier or distributor of Dried Herring
10 I; have received a notice and warning materials for exposure from Dried Herring I
11 without conspicuously posting or displaying the warning materials; and/or have actual
12 knowledge of potential exposure to Lead from Dried Herring I. Defendants thereby
13 violated Proposition 65.

14 46. The principal routes of exposure are through dermal contact, ingestion and inhalation.
15 Persons sustain exposures by eating and consuming Dried Herring I, as well as through
16 direct and indirect hand to mouth contact, hand to mucous membrane, or breathing in
17 particulate matter dispersed from Dried Herring I.

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

24 48. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
25 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
26 violations alleged herein will continue to occur into the future.
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1 49. 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 Herring I, pursuant to
3 Health and Safety Code Section 25249.7(b).

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

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7 **THIRD CAUSE OF ACTION**

8 **(By CONSUMER ADVOCACY GROUP, INC. and against PHILIPPINE**
9 **FOODTRADE, SAN GABRIEL SUPERSTORE and DOES 21-30 for Violations of**
10 **Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986**
11 **(Health & Safety Code, §§ 25249.5, et seq.))**

12 **Seafood Products III**

13 51. Plaintiff repeats and incorporates by reference paragraphs 1 through 28 of this complaint
14 as though fully set forth herein.

15 52. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
16 distributor, promoter, or retailer of Dried Herring II, including but not limited to "AI
17 Tropics Since 1970"; "Dried Salted Herring Tunsoy"; "Net Wt. 6 oz (170 grams)";
18 "Product of the Philippines"; "Distributed by Philippine Foodtrade Corp. and Foodasia
19 International Corp."; "Lot No. 70221237 4915"; "UPC 0 30283 010076".

20 53. Dried Herring II contains Lead and Arsenic.

21 54. Defendants knew or should have known that Lead and Arsenic have been identified by
22 the State of California as chemicals known to cause cancer, and/ or reproductive toxicity
23 and therefore was subject to Proposition 65 warning requirements. Defendants were also
24 informed of the presence of Lead and Arsenic in Dried Herring II within Plaintiff's
25 notice of alleged violations further discussed above at Paragraph 23c.

26 55. Plaintiff's allegations regarding Dried Herring II concerns "[c]onsumer products
27 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
28 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*

25602(b). Dried Herring II is a consumer product, and, as mentioned herein, exposures to Lead and Arsenic took place as a result of such normal and foreseeable consumption and use.

56. Plaintiff is informed, believes, and thereon alleges that between November 28, 2019 and the present, each of the Defendants knowingly and intentionally exposed California consumers and users of Dried Herring II, which Defendants manufactured, distributed, or sold as mentioned above, to Lead and Arsenic, without first providing any type of clear and reasonable warning of such to the exposed persons before the time of exposure. Defendants have distributed and sold Dried Herring II in California. Defendants know and intend that California consumers will use and consume Dried Herring II, thereby exposing them to Lead and Arsenic. Further, Plaintiff is informed, believes, and thereon alleges that Defendants are selling Dried Herring II under a brand or trademark that is owned or licensed by the Defendants or an entity affiliated thereto; have knowingly introduced Lead and Arsenic into product or knowingly caused Lead and Arsenic to be created in Dried Herring II; have covered, obscured or altered a warning label that has been affixed to Dried Herring II by the manufacturer, producer, packager, importer, supplier or distributor of Dried Herring II; have received a notice and warning materials for exposure from Dried Herring II without conspicuously posting or displaying the warning materials; and/or have actual knowledge of potential exposure to Lead and Arsenic from Dried Herring II. Defendants thereby violated Proposition 65.

57. The principal routes of exposure are through dermal contact, ingestion and inhalation. Persons sustain exposures by eating and consuming Dried Herring II, as well as through direct and indirect hand to mouth contact, hand to mucous membrane, or breathing in particulate matter dispersed from Dried Herring II.

58. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of Proposition 65 as to Dried Herring II have been ongoing and continuous, as Defendants engaged and continue to engage in conduct which violates Health and Safety Code

Section 25249.6, including the manufacture, distribution, promotion, and sale of Dried Herring, so that a separate and distinct violation of Proposition 65 occurred each and every time a person was exposed to Lead and Arsenic by Dried Herring II as mentioned herein.

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

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

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

FOURTH CAUSE OF ACTION

(By CONSUMER ADVOCACY GROUP, INC. and against PHILIPPINE FOODTRADE, SAN GABRIEL SUPERSTORE and DOES 31-40 for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (Health & Safety Code, §§ 25249.5, et seq.))

Seafood Products IV

62. Plaintiff repeats and incorporates by reference paragraphs 1 through 28 of this complaint as though fully set forth herein.

63. Each of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor, promoter, or retailer of Sardines in Tomato Sauce ("Sardines II"), including but not limited to "AI Tropics Since 1970"; "In Toronto Sauce Sardines"; "Net Wt. 15 oz (425 g)"; "Distributed by Philippine Foodtrade Corp."; "Product of Philippines"; "EXP. 08 Oct 2023"; "TSCTA 081020 CG"; "UPC 0 30283 00215 6".

64. Sardines II contains Cadmium.

65. Defendants knew or should have known that Cadmium have been identified by the State of California as chemicals known to cause cancer, and reproductive toxicity and

1 therefore was subject to Proposition 65 warning requirements. Defendants were also
2 informed of the presence of Cadmium in Sardines II within Plaintiff's notice of alleged
3 violations further discussed above at Paragraph 23d.

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

10 67. Plaintiff is informed, believes, and thereon alleges that between November 28, 2019 and
11 the present, each of the Defendants knowingly and intentionally exposed California
12 consumers and users of Sardines II, which Defendants manufactured, distributed, or sold
13 as mentioned above, to Cadmium, without first providing any type of clear and
14 reasonable warning of such to the exposed persons before the time of exposure.
15 Defendants have distributed and sold Sardines II in California. Defendants know and
16 intend that California consumers will use and consume Sardines II, thereby exposing
17 them to Cadmium. Further, Plaintiff is informed, believes, and thereon alleges that
18 Defendants are selling Sardines II under a brand or trademark that is owned or licensed
19 by the Defendants or an entity affiliated thereto; have knowingly introduced Cadmium
20 into product or knowingly caused Cadmium to be created in Sardines II; have covered,
21 obscured or altered a warning label that has been affixed to Sardines II by the
22 manufacturer, producer, packager, importer, supplier or distributor of Sardines II; have
23 received a notice and warning materials for exposure from Sardines II without
24 conspicuously posting or displaying the warning materials; and/or have actual
25 knowledge of potential exposure to Cadmium from Sardines II. Defendants thereby
26 violated Proposition 65.

- 1 68. The principal routes of exposure are through dermal contact, ingestion and inhalation.
2 Persons sustain exposures by eating and consuming Sardines II, as well as through direct
3 and indirect hand to mouth contact, hand to mucous membrane, or breathing in
4 particulate matter dispersed from Sardines II.
- 5 69. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
6 Proposition 65 as to Sardines II have been ongoing and continuous, as Defendants
7 engaged and continue to engage in conduct which violates Health and Safety Code
8 Section 25249.6, including the manufacture, distribution, promotion, and sale of
9 Sardines II, so that a separate and distinct violation of Proposition 65 occurred each and
10 every time a person was exposed to Cadmium by Sardines II as mentioned herein.
- 11 70. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
12 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
13 violations alleged herein will continue to occur into the future.
- 14 71. Based on the allegations herein, Defendants are liable for civil penalties of up to
15 \$2,500.00 per day per individual exposure to Cadmium from Sardines II, pursuant to
16 Health and Safety Code Section 25249.7(b).
- 17 72. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
18 filing this Complaint.

19 **FIFTH CAUSE OF ACTION**

20 **(By CONSUMER ADVOCACY GROUP, INC. and against PHILIPPINE**
21 **FOODTRADE, SHUN FAT and DOES 41-50 for Violations of Proposition 65, The**
22 **Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code,***
23 **§§ 25249.5, *et seq.*))**

24 **Seafood Product V**

- 25 73. Plaintiff repeats and incorporates by reference paragraphs 1 through 28 of this complaint
26 as though fully set forth herein.
- 27 74. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
28 distributor, promoter, or retailer of Sardines in Tomato Sauce ("Sardines III"), including

1 but not limited to "AI Tropics Since 1970"; "In Tomato Sauce Sardines"; "Net Wt. 15 oz
2 (425 g)"; "Distributed by Philippine Foodtrade Corp."; "Product of Philippines"; "Exp.
3 08 Oct 2023"; "TSCTA 081020 CG"; "UPC 0 30283 00215 6".

4 75. Sardines III contains Cadmium.

5 76. Defendants knew or should have known that Cadmium have been identified by the State
6 of California as chemicals known to cause cancer, and reproductive toxicity and
7 therefore was subject to Proposition 65 warning requirements. Defendants were also
8 informed of the presence of Cadmium in Sardines III within Plaintiff's notice of alleged
9 violations further discussed above at Paragraph 23e.

10 77. Plaintiff's allegations regarding Sardines III concerns "[c]onsumer products
11 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
12 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
13 exposure that results from receiving a consumer service." *Cal. Code Regs.* tit. 27, §
14 25602(b). Sardines III is a consumer product, and, as mentioned herein, exposures to
15 Cadmium took place as a result of such normal and foreseeable consumption and use.

16 78. Plaintiff is informed, believes, and thereon alleges that between November 28, 2019 and
17 the present, each of the Defendants knowingly and intentionally exposed California
18 consumers and users of Sardines III, which Defendants manufactured, distributed, or
19 sold as mentioned above, to Cadmium, without first providing any type of clear and
20 reasonable warning of such to the exposed persons before the time of exposure.

21 Defendants have distributed and sold Sardines III in California. Defendants know and
22 intend that California consumers will use and consume Sardines III, thereby exposing
23 them to Cadmium. Further, Plaintiff is informed, believes, and thereon alleges that
24 Defendants are selling Sardines III under a brand or trademark that is owned or licensed
25 by the Defendants or an entity affiliated thereto; have knowingly introduced Cadmium
26 into product or knowingly caused Cadmium to be created in Sardines III; have covered,
27 obscured or altered a warning label that has been affixed to Sardines III by the

1 manufacturer, producer, packager, importer, supplier or distributor of Sardines III; have
2 received a notice and warning materials for exposure from Sardines III without
3 conspicuously posting or displaying the warning materials; and/or have actual
4 knowledge of potential exposure to Cadmium from Sardines III. Defendants thereby
5 violated Proposition 65.

6 79. The principal routes of exposure are through dermal contact, ingestion and inhalation.
7 Persons sustain exposures by eating and consuming Sardines III, as well as through
8 direct and indirect hand to mouth contact, hand to mucous membrane, or breathing in
9 particulate matter dispersed from Sardines III.

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

16 81. 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 82. 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 Sardines III, pursuant to
21 Health and Safety Code Section 25249.7(b).

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

24 84. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
25 filing this Complaint.

1 **PRAYER FOR RELIEF**

2 Plaintiff demands against each of the Defendants as follows:

3 85. A permanent injunction mandating Proposition 65-compliant warnings;

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

5 87. Costs of suit;

6 88. Reasonable attorney fees and costs; and

7 89. Any further relief that the court may deem just and equitable.

8
9 Dated: February 21, 2023

YEROUSHALMI & YEROUSHALMI*

10
11 /s/ Reuben Yeroushalmi

12 Reuben Yeroushalmi

13 Attorneys for Plaintiff,

14 CONSUMER ADVOCACY GROUP, INC.