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CONSUMER ADVOCACY GROUP, INC.

FILED
Superior Court of California
County of Los Angeles
03/07/2023
David W. Slayton, Executive Officer / Clerk of Court
By: B. Byers Deputy

6 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
7 **COUNTY OF LOS ANGELES**

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

11 Plaintiff,

12 v.

13 PHILIPPINE FOODTRADE CORP., a
California Corporation;
14 SHUN FAT SUPERMARKET INC., a
California Corporation;
15 TRANS FAMILY, INC. DBA SAN
GABRIEL SUPERSTORE, a California
16 Corporation;
ISLAND PACIFIC SUPERMARKETS,
INC., a California Corporation;
and DOES 1-70,

17 Defendants.

CASE NO. 23STCV03836

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 \$25,000)

1 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges seven causes of action
2 against defendants PHILIPPINE FOODTRADE CORP.; SHUN FAT SUPERMARKET INC.;
3 TRANS FAMILY, INC. DBA SAN GABRIEL SUPERSTORE and DOES 1-70 as follows:

4 **THE PARTIES**

- 5 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an
6 organization qualified to do business in the State of California. CAG is a person within
7 the meaning of Health and Safety Code Section 25249.11, subdivision (a). CAG, acting
8 as a private attorney general, brings this action in the public interest as defined under
9 Health and Safety Code Section 25249.7, subdivision (d).
- 10 2. Defendant PHILIPPINE FOODTRADE CORP. (“PHILIPPINE FOODTRADE”) is a
11 California Corporation qualified to do business in California, and doing business in the
12 State of California at all relevant times herein.
- 13 3. Defendant SHUN FAT SUPERMARKET INC. (“SHUN FAT”) is a California
14 Corporation qualified to do business in California, and doing business in the State of
15 California at all relevant times herein.
- 16 4. Defendant TRANS FAMILY, INC. DBA SAN GABRIEL SUPERSTORE (“SAN
17 GABRIEL SUPERSTORE”) is a California Corporation qualified to do business in
18 California, and doing business in the State of California at all relevant times herein.
- 19 5. Defendant ISLAND PACIFIC SUPERMARKETS, INC. (“ISLAND PACIFIC”) is a
20 California Corporation qualified to do business in California, and doing business in the
21 State of California at all relevant times herein.
- 22 6. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-70,
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

1 informed, believes, and thereon alleges that each fictitiously named defendant is
2 responsible in some manner for the occurrences herein alleged and the damages caused
3 thereby.

4 7. At all times mentioned herein, the term "Defendants" includes PHILIPPINE
5 FOODTRADE, SHUN FAT, SAN GABRIEL SUPERSTORE, ISLAND PACIFIC and
6 DOES 1-70.

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

9 9. Upon information and belief, at all times relevant to this action, each of the Defendants,
10 including DOES 1-70, was an agent, servant, or employee of each of the other
11 Defendants. In conducting the activities alleged in this Complaint, each of the
12 Defendants was acting within the course and scope of this agency, service, or
13 employment, and was acting with the consent, permission, and authorization of each of
14 the other Defendants. All actions of each of the Defendants alleged in this Complaint
15 were ratified and approved by every other Defendant or their officers or managing
16 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the
17 alleged wrongful conduct of each of the other Defendants.

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

22 **JURISDICTION**

11. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
VI, Section 10, which grants the Superior Court original jurisdiction in all causes except

1 those given by statute to other trial courts. This Court has jurisdiction over this action
2 pursuant to Health and Safety Code Section 25249.7, which allows enforcement of
3 violations of Proposition 65 in any Court of competent jurisdiction.

4 **12.** This Court has jurisdiction over Defendants named herein because Defendants either
5 reside or are located in this State or are foreign corporations authorized to do business in
6 California, are registered with the California Secretary of State, or who do sufficient
7 business in California, have sufficient minimum contacts with California, or otherwise
8 intentionally avail themselves of the markets within California through their
9 manufacture, distribution, promotion, marketing, or sale of their products within
10 California to render the exercise of jurisdiction by the California courts permissible
11 under traditional notions of fair play and substantial justice.

12 **13.** Venue is proper in the County of Los Angeles because one or more of the instances of
13 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
14 because Defendants conducted, and continue to conduct, business in the County of Los
15 Angeles with respect to the consumer product that is the subject of this action.

16 **BACKGROUND AND PRELIMINARY FACTS**

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

1 they buy, and to enable persons to protect themselves from toxic chemicals as they see
2 fit.

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

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

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

20 18. Plaintiff identified certain practices of manufacturers and distributors of Food Products
21 of exposing, knowingly and intentionally, persons in California to Lead and Lead
22 Compounds, Cadmium and Cadmium Compounds, and Inorganic Arsenic Compounds,
and/or Inorganic Arsenic Oxides of such products without first providing clear and

1 reasonable warnings of such to the exposed persons prior to the time of exposure.

2 Plaintiff later discerned that Defendants engaged in such practice.

3 19. On October 1, 1992 the Governor of California added Lead and Lead Compounds
4 (“Lead”) to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit.
5 27, § 27001(b)). Pursuant to Health and Safety Code Sections 25249.9 and 25249.10,
6 twenty (20) months after addition of Lead to the list of chemicals known to the State to
7 cause cancer, Lead became fully subject to Proposition 65 warning requirements and
8 discharge prohibitions.

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

16 21. On October 1, 1987 the Governor of California added Cadmium and Cadmium
17 Compounds (“Cadmium”) to the list of chemicals known to the State to cause cancer
18 (*Cal. Code Regs.* tit. 27, § 27001(b)). Pursuant to Health and Safety Code Sections
19 25249.9 and 25249.10, twenty (20) months after addition of Cadmium to the list of
20 chemicals known to the State to cause cancer, Cadmium became fully subject to
21 Proposition 65 warning requirements and discharge prohibitions.

22 22. On May 1, 1997, the Governor of California added Cadmium to the list of chemicals
known to the State to cause developmental and reproductive toxicity (*Cal. Code Regs.*
tit. 27, § 27001(c)). Cadmium is known to the State to cause developmental, and male

1 reproductive toxicity. Pursuant to Health and Safety Code Sections 25249.9 and
2 25249.10, twenty (20) months after addition of Cadmium to the list of chemicals known
3 to the State to cause developmental and reproductive toxicity, Cadmium became fully
4 subject to Proposition 65 warning requirements and discharge prohibitions.

5 23. On May 1, 1997, the Governor of California added Inorganic Arsenic Oxides to the list
6 of chemicals known to the State to cause developmental toxicity (*Cal. Code Regs.* tit. 27,
7 § 27001(c)). Inorganic Arsenic Oxides is known to the State to cause developmental,
8 toxicity. Pursuant to Health and Safety Code Sections 25249.9 and 25249.10, twenty (20)
9 months after addition of Inorganic Arsenic Oxides to the list of chemicals known to the
10 State to cause developmental toxicity, Inorganic Arsenic Oxides became fully subject to
11 Proposition 65 warning requirements and discharge prohibitions. Inorganic Arsenic
12 Oxides is hereinafter referred to as “Arsenic”.

13 **SATISFACTION OF PRIOR NOTICE**

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

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

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, SAN
8 GABRIEL SUPERSTORE and to the California Attorney General, County
9 District Attorneys, and City Attorneys for each city containing a population of at
10 least 750,000 people in whose jurisdictions the violations allegedly occurred,
11 concerning the Dried Herring.

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

19 e. On or about December 16, 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
City Attorneys for each city containing a population of at least 750,000 people

1 in whose jurisdictions the violations allegedly occurred, concerning the Sardines
2 in Tomato Sauce.

3 f. On or about December 22, 2022, Plaintiff gave notice of alleged violations of
4 Health and Safety Code Section 25249.6, concerning consumer products
5 exposures subject to a private action to PHILIPPINE FOODTRADE, ISLAND
6 PACIFIC, and to the California Attorney General, County District Attorneys,
7 and City Attorneys for each city containing a population of at least 750,000
8 people in whose jurisdictions the violations allegedly occurred, concerning the
9 Smoked Herring.

10 g. On or about December 22, 2022, Plaintiff gave notice of alleged violations of
11 Health and Safety Code Section 25249.6, concerning consumer products
12 exposures subject to a private action to PHILIPPINE FOODTRADE, ISLAND
13 PACIFIC, and to the California Attorney General, County District Attorneys,
14 and City Attorneys for each city containing a population of at least 750,000
15 people in whose jurisdictions the violations allegedly occurred, concerning the
16 Dried Ponyfish.

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

21 26. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
22 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,

1 Arsenic, 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 27. 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 28. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
11 gave notice of the alleged violations to PHILIPPINE FOODTRADE, SHUN FAT , SAN
12 GABRIEL SUPERSTORE, ISLAND PACIFIC and the public prosecutors referenced in
13 Paragraph 23.

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

FIRST CAUSE OF ACTION

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

Seafood Product I

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

31. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
distributor, promoter, or retailer of Sardines in Tomato Sauce ("Sardines I"), including

1 but not limited to "AI Tropics Since 1970"; "In Tomato Sauce Sardines"; "Net Wt. 5.5 oz
2 (155 g)"; "Distributed by Philippine Foodtrade Corp."; "Product of Philippines"; "Exp.
3 30 Jun 2023"; "TSTTA 300620 AD"; "UPC 0 30283 00212 5".

4 32. Sardines I contains Cadmium.

5 33. Defendants knew or should have known that Cadmium has been identified by the State
6 of California as a chemical 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 I within Plaintiff's notice of alleged
9 violations further discussed above at Paragraph 23a.

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

16 35. Plaintiff is informed, believes, and thereon alleges that between November 15, 2019 and
17 the present, each of the Defendants knowingly and intentionally exposed California
18 consumers and users of Sardines I, which Defendants manufactured, distributed, or sold
19 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 I in California. Defendants know and
22 intend that California consumers will use and consume Sardines I, thereby exposing
them to Cadmium. Further, Plaintiff is informed, believes, and thereon alleges that
Defendants are selling Sardines I under a brand or trademark that is owned or licensed

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

9 36. The principal routes of exposure are through dermal contact, ingestion and inhalation.
10 Persons sustain exposures by eating and consuming Sardines I, as well as through direct
11 and indirect hand to mouth contact, hand to mucous membrane, or breathing in
12 particulate matter dispersed from Sardines I.

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

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

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

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

3 **SECOND CAUSE OF ACTION**

4 **(By CONSUMER ADVOCACY GROUP, INC. and against PHILIPPINE**
5 **FOODTRADE and DOES 11-20 for Violations of Proposition 65, The Safe**
6 **Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§***
7 **25249.5, *et seq.*))**

8 **Seafood Product II**

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

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

16 43. Dried Herring I contains Lead.

17 44. Defendants knew or should have known that Lead has been identified by the State of
18 California as a chemical known to cause cancer, and reproductive toxicity and therefore
19 was subject to Proposition 65 warning requirements. Defendants were also informed of
20 the presence of Lead in Dried Herring I within Plaintiff's notice of alleged violations
21 further discussed above at Paragraph 23b.

22 45. Plaintiff's allegations regarding Dried Herring I concerns "[c]onsumer products
exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
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, §*

1 25602(b). Dried Herring I is a consumer product, and, as mentioned herein, exposures to
2 Lead took place as a result of such normal and foreseeable consumption and use.

3 46. Plaintiff is informed, believes, and thereon alleges that between November 15, 2019 and
4 the present, each of the Defendants knowingly and intentionally exposed California
5 consumers and users of Dried Herring I, which Defendants manufactured, distributed, or
6 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 Herring I in California. Defendants know
9 and intend that California consumers will use and consume Dried Herring I, thereby
10 exposing them to Lead. Further, Plaintiff is informed, believes, and thereon alleges that
11 Defendants are selling Dried Herring I 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 product or knowingly caused Lead to be created in Dried Herring I; have
14 covered, obscured or altered a warning label that has been affixed to Dried Herring I by
15 the manufacturer, producer, packager, importer, supplier or distributor of Dried Herring
16 I; have received a notice and warning materials for exposure from Dried Herring I
17 without conspicuously posting or displaying the warning materials; and/or have actual
18 knowledge of potential exposure to Lead from Dried Herring I. Defendants thereby
19 violated Proposition 65.

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

1 48. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
2 Proposition 65 as to Dried Herring I 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 Herring I, so that a separate and distinct violation of Proposition 65 occurred each and
6 every time a person was exposed to Lead by Dried Herring I as mentioned herein.

7 49. 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 50. 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 Herring I, pursuant to
12 Health and Safety Code Section 25249.7(b).

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

15 THIRD CAUSE OF ACTION

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

20 **Seafood Products III**

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

53. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
distributor, promoter, or retailer of Dried Herring II, including but not limited to "AI
Tropics Since 1970"; "Dried Salted Herring Tunsoy"; "Net Wt. 6 oz (170 grams)";

1 "Product of the Philippines"; "Distributed by Philippine Foodtrade Corp. and Foodasia
2 International Corp."; "Lot No. 70221237 4915"; "UPC 0 30283 010076".

3 54. Dried Herring II contains Lead and Arsenic.

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

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

16 57. 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 Dried Herring II, which Defendants manufactured, distributed, or
19 sold as mentioned above, to Lead and Arsenic, without first providing any type of clear
20 and reasonable warning of such to the exposed persons before the time of exposure.
21 Defendants have distributed and sold Dried Herring II in California. Defendants know
22 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

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

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

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

20 60. 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.

1 61. 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 II, pursuant to
3 Health and Safety Code Section 25249.7(b).

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

6 **FOURTH CAUSE OF ACTION**

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

11 **Seafood Products IV**

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

14 64. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
15 distributor, promoter, or retailer of Sardines in Tomato Sauce (“Sardines II”), including
16 but not limited to "AI Tropics Since 1970"; "In Toronto Sauce Sardines"; "Net Wt. 15 oz
17 (425 g)"; "Distributed by Philippine Foodtrade Corp."; "Product of Philippines"; "EXP.
18 08 Oct 2023"; "TSCTA 081020 CG"; "UPC 0 30283 00215 6".

19 65. Sardines II contains Cadmium.

20 66. Defendants knew or should have known that Cadmium have been identified by the State
21 of California as chemicals known to cause cancer, and reproductive toxicity and
22 therefore was subject to Proposition 65 warning requirements. Defendants were also
informed of the presence of Cadmium in Sardines II within Plaintiff's notice of alleged
violations further discussed above at Paragraph 23d.

67. Plaintiff's allegations regarding Sardines II concerns “[c]onsumer products exposure[s],”
which “is an exposure that results from a person’s acquisition, purchase, storage,

1 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
2 that results from receiving a consumer service.” *Cal. Code Regs. Tit. 27, § 25602(b)*.

3 Sardines II is a consumer product, and, as mentioned herein, exposures to Cadmium took
4 place as a result of such normal and foreseeable consumption and use.

5 68. Plaintiff is informed, believes, and thereon alleges that between November 28, 2019 and
6 the present, each of the Defendants knowingly and intentionally exposed California
7 consumers and users of Sardines II, which Defendants manufactured, distributed, or sold
8 as mentioned above, to Cadmium, without first providing any type of clear and
9 reasonable warning of such to the exposed persons before the time of exposure.

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

22 69. The principal routes of exposure are through dermal contact, ingestion and inhalation.
Persons sustain exposures by eating and consuming Sardines II, as well as through direct

1 and indirect hand to mouth contact, hand to mucous membrane, or breathing in
2 particulate matter dispersed from Sardines II.

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

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

12 72. Based on the allegations herein, Defendants are liable for civil penalties of up to
13 \$2,500.00 per day per individual exposure to Cadmium from Sardines II, pursuant to
14 Health and Safety Code Section 25249.7(b).

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

17 **FIFTH CAUSE OF ACTION**

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

22 **Seafood Product V**

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

75. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
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 76. Sardines III contains Cadmium.

5 77. 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 78. 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 79. 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
them to Cadmium. Further, Plaintiff is informed, believes, and thereon alleges that
Defendants are selling Sardines III under a brand or trademark that is owned or licensed

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

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

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

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

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

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

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

5
6 **SIXTH CAUSE OF ACTION**

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

11 **Seafood Product VI**

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

14 87. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
15 distributor, promoter, or retailer of Smoked Herring (“Smoked Herring”), including but
16 not limited to “AI Tropics Since 1970”; “Smoked Herring Tinapang Tunsoy Fully
17 Eviscerated”; “Net Wt. 6 oz. (170 grams)”; “Product of the Philippines”; “Distributed by
18 Philippine Foodtrade Corp. and Foodasia International Corp.”; “Lot No. 70912237
19 5185”; “UPC 0 30283 00907 0”.

20 88. Smoked Herring contains Lead and Arsenic.

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

1 90. Plaintiff’s allegations regarding Smoked Herring concerns “[c]onsumer products
2 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,
3 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
4 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*
5 *25602(b)*. Smoked Herring are consumer products, and, as mentioned herein, exposures
6 to Lead and Arsenic took place as a result of such normal and foreseeable consumption
7 and use.

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

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

7 93. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
8 Proposition 65 as to Smoked Herring 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 Smoked
11 Herring, so that a separate and distinct violation of Proposition 65 occurred each and
12 every time a person was exposed to Lead and Arsenic by Smoked Herring as mentioned
13 herein.

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

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

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

1 **SEVENTH CAUSE OF ACTION**

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

6 **Seafood Product VII**

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

9 98. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
10 distributor, promoter, or retailer of Dried Ponyfish (“Dried Ponyfish”), including but not
11 limited to “AI Tropics Since 1970”; “Dried Salted Spenidid PonyFish Sapsap Fully
12 Eviscerated”; “Net Wt. 4 oz. (113 grams)”; “Product of the Philippines”; “Distributed by
13 Philippine Foodtrade Corp. and Foodasia International Corp.”; “Lot No. 70220227
14 4554”; “UPC 0 30283 01009 0”.

15 99. Dried Ponyfish contains Lead and Arsenic.

16 100. Defendants knew or should have known that Lead and Arsenic has been identified by
17 the State of California as a chemical known to cause cancer, and/or reproductive toxicity
18 and therefore was subject to Proposition 65 warning requirements. Defendants were also
19 informed of the presence of Lead and Arsenic in Dried Ponyfish within Plaintiff’s notice
20 of alleged violations further discussed above at Paragraph 23g.

21 101. Plaintiff’s allegations regarding Dried Ponyfish concerns “[c]onsumer products
22 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,
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 Ponyfish are consumer products, and, as mentioned herein, exposures

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

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

20 103. The principal routes of exposure are through dermal contact, ingestion and
21 inhalation. Persons sustain exposures by handling Dried Ponyfish without wearing
22 gloves or any other personal protective equipment, or by touching bare skin or mucous
membranes with gloves after handling Dried Ponyfish, as well as through direct and

1 indirect hand to mouth contact, hand to mucous membrane, or breathing in particulate
2 matter dispersed from Dried Ponyfish.

3 104. Plaintiff is informed, believes, and thereon alleges that each of Defendants'
4 violations of Proposition 65 as to Dried Ponyfish 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 Dried Ponyfish, so that a separate and distinct violation of Proposition 65 occurred each
8 and every time a person was exposed to Lead and Arsenic by Dried Ponyfish as
9 mentioned herein.

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

13 106. 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 and Arsenic from Dried Ponyfish,
15 pursuant to Health and Safety Code Section 25249.7(b).

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

18 **PRAYER FOR RELIEF**

19 Plaintiff demands against each of the Defendants as follows:

20 108. A permanent injunction mandating Proposition 65-compliant warnings;

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

22 110. Costs of suit;

111. Reasonable attorney fees and costs; and

1 112. Any further relief that the court may deem just and equitable.

2
3 Dated: March 3, 2023

YEROUSHALMI & YEROUSHALMI*

4
5 /s/ Reuben Yeroushalmi _____
6 Reuben Yeroushalmi
7 Attorneys for Plaintiff,
8 CONSUMER ADVOCACY GROUP, INC.
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