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9 CONSUMER ADVOCACY GROUP, INC.

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County of Alameda
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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF ALAMEDA**

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

15 Plaintiff,

16 v.

17 ASIA PACIFIC GROCERS LLC, dba JUST
18 ASIAN FOOD, a New Jersey Limited
19 Liability Company;
20 EVERLASTING DISTRIBUTORS, INC., a
21 New Jersey Corporation;
22 GOLDEN FORTUNE IMPORT & EXPORT
23 CORPORATION, a New Jersey Corporation;
24 ARKO FOODS INTERNATIONAL, INC.,
25 dba ASIAN COMMODITIES COMPANY, a
26 California Corporation;
27 JANS ENTERPRISES CORPORATION, a
28 California Corporation;
and DOES 1-50,

Defendants.

CASE NO. 23CV039809

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 five causes of action
2 against defendants ASIA PACIFIC GROCERS LLC, dba JUST ASIAN FOOD,
3 EVERLASTING DISTRIBUTORS, INC., GOLDEN FORTUNE IMPORT & EXPORT
4 CORPORATION, ARKO FOODS INTERNATIONAL, INC., dba ASIAN COMMODITIES
5 COMPANY, JANS ENTERPRISES CORPORATION, and DOES 1-50 as follows:

6 **THE PARTIES**

- 7 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an
8 organization qualified to do business in the State of California. CAG is a person within
9 the meaning of Health and Safety Code Section 25249.11, subdivision (a). CAG, acting
10 as a private attorney general, brings this action in the public interest as defined under
11 Health and Safety Code Section 25249.7, subdivision (d).
- 12 2. Defendant ASIA PACIFIC GROCERS LLC, dba JUST ASIAN FOOD (“PACIFIC”) is
13 a New Jersey Limited Liability Company qualified to do business in New Jersey and
14 doing business in the State of California at all relevant times herein.
- 15 3. Defendant EVERLASTING DISTRIBUTORS, INC. (“EVERLASTING”) is a New
16 Jersey Corporation qualified to do business in New Jersey and doing business in the
17 State of California at all relevant times herein.
- 18 4. Defendant GOLDEN FORTUNE IMPORT & EXPORT CORPORATION
19 (“FORTUNE”) is a New Jersey Corporation qualified to do business in New Jersey and
20 doing business in the State of California at all relevant times herein.
- 21 5. Defendant ARKO FOODS INTERNATIONAL, INC., dba ASIAN COMMODITIES
22 COMPANY (“ARKO”) is a California Corporation, qualified to do business in
23 California, and doing business in the State of California at all relevant times herein.
- 24 6. Defendant JANS ENTERPRISES CORPORATION (“JANS”) is a California
25 Corporation, qualified to do business in California, and doing business in the State of
26 California at all relevant times herein.

1 7. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-50,
2 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
3 Complaint to allege their true names and capacities when ascertained. Plaintiff is
4 informed, believes, and thereon alleges that each fictitiously named defendant is
5 responsible in some manner for the occurrences herein alleged and the damages caused
6 thereby.

7 8. At all times mentioned herein, the term “Defendants” includes PACIFIC,
8 EVERLASTING, FORTUNE, ARKO, JANS, and DOES 1-50.

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

11 10. Upon information and belief, at all times relevant to this action, each of the Defendants,
12 including DOES 1-50, was an agent, servant, or employee of each of the other
13 Defendants. In conducting the activities alleged in this Complaint, each of the
14 Defendants was acting within the course and scope of this agency, service, or
15 employment, and was acting with the consent, permission, and authorization of each of
16 the other Defendants. All actions of each of the Defendants alleged in this Complaint
17 were ratified and approved by every other Defendant or their officers or managing
18 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the
19 alleged wrongful conduct of each of the other Defendants.

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

24 **JURISDICTION**

25 12. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
26 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
27 those given by statute to other trial courts. This Court has jurisdiction over this action
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1 pursuant to Health and Safety Code Section 25249.7, which allows enforcement of
2 violations of Proposition 65 in any Court of competent jurisdiction.

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

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

15 **BACKGROUND AND PRELIMINARY FACTS**

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

25 16. Proposition 65 requires the Governor of California to publish a list of chemicals known
26 to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*
27 *Code* § 25249.8. The list, which the Governor updates at least once a year, contains over
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1 700 chemicals and chemical families. Proposition 65 imposes warning requirements and
2 other controls that apply to Proposition 65-listed chemicals.

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

9 18. Proposition 65 provides that any person "violating or threatening to violate" the statute
10 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §
11 25249.7. "Threaten to violate" means "to create a condition in which there is a
12 substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).
13 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
14 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

15 19. Plaintiff identified certain practices of manufacturers and distributors of Fried Anchovy
16 of exposing, knowingly and intentionally, persons in California to Inorganic Arsenic
17 Compounds, and/or Inorganic Arsenic Oxides of such products without first providing
18 clear and reasonable warnings of such to the exposed persons prior to the time of
19 exposure. Plaintiff later discerned that Defendants engaged in such practice.

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

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

3 22. Plaintiff identified certain practices of manufacturers and distributors of Dried Salted
4 Rabbitfish of exposing, knowingly and intentionally, persons in California to Lead and
5 Lead Compounds of such products without first providing clear and reasonable warnings
6 of such to the exposed persons prior to the time of exposure. Plaintiff later discerned
7 that Defendants engaged in such practice.

8 23. Plaintiff identified certain practices of manufacturers and distributors of Dried Laver of
9 exposing, knowingly and intentionally, persons in California to Cadmium and Cadmium
10 Compounds, and Lead and Lead Compounds of such products without first providing
11 clear and reasonable warnings of such to the exposed persons prior to the time of
12 exposure. Plaintiff later discerned that Defendants engaged in such practice.

13 24. On October 1, 1992 the Governor of California added Lead and Lead Compounds
14 (“Lead”) to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit.
15 27, § 27001(b)). Pursuant to Health and Safety Code Sections 25249.9 and 25249.10,
16 twenty (20) months after addition of Lead to the list of chemicals known to the State to
17 cause cancer, Lead became fully subject to Proposition 65 warning requirements and
18 discharge prohibitions.

19 25. On February 27, 1987, the Governor of California added Lead to the list of chemicals
20 known to the State to cause developmental and reproductive toxicity (*Cal. Code Regs.*
21 tit. 27, § 27001(c)). Lead is known to the State to cause developmental, female, and
22 male reproductive toxicity. Pursuant to Health and Safety Code Sections 25249.9 and
23 25249.10, twenty (20) months after addition of Lead to the list of chemicals known to
24 the State to cause developmental and reproductive toxicity, Lead became fully subject to
25 Proposition 65 warning requirements and discharge prohibitions.

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

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

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

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

20 **SATISFACTION OF PRIOR NOTICE**

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

- 23 a. On or about March 28, 2022, Plaintiff gave notice of alleged violations of
24 Health and Safety Code Section 25249.6, concerning consumer products
25 exposures subject to a private action to PACIFIC, ARKO, and to the California
26 Attorney General, County District Attorneys, and City Attorneys for each city
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1 containing a population of at least 750,000 people in whose jurisdictions the
2 violations allegedly occurred, concerning the Fried Anchovy.

- 3 b. On or about May 3, 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 PACIFIC and to the California Attorney General,
6 County District Attorneys, and City Attorneys for each city containing a
7 population of at least 750,000 people in whose jurisdictions the violations
8 allegedly occurred, concerning the Crispy Anchovy.
- 9 c. On or about May 3, 2022, Plaintiff gave notice of alleged violations of Health
10 and Safety Code Section 25249.6, concerning consumer products exposures
11 subject to a private action to PACIFIC, JANS, and to the California Attorney
12 General, County District Attorneys, and City Attorneys for each city containing
13 a population of at least 750,000 people in whose jurisdictions the violations
14 allegedly occurred, concerning the Dried Squid.
- 15 d. 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 PACIFIC, EVERLASTING, FORTUNE,
18 and to the California Attorney General, County District Attorneys, and City
19 Attorneys for each city containing a population of at least 750,000 people in
20 whose jurisdictions the violations allegedly occurred, concerning the Dried
21 Salted Rabbitfish.
- 22 e. On or about January 26, 2023, Plaintiff gave notice of alleged violations of
23 Health and Safety Code Section 25249.6, concerning consumer products
24 exposures subject to a private action to PACIFIC and to the California Attorney
25 General, County District Attorneys, and City Attorneys for each city containing
26 a population of at least 750,000 people in whose jurisdictions the violations
27 allegedly occurred, concerning the Dried Laver.

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

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

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

18 33. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
19 gave notice of the alleged violations to PACIFIC, EVERLASTING, FORTUNE, ARKO,
20 JANS, and the public prosecutors referenced in Paragraph 29.

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

24 **FIRST CAUSE OF ACTION**

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

28 **Seafood Snacks**

1 35. Plaintiff repeats and incorporates by reference paragraphs 1 through 34 of this complaint
2 as though fully set forth herein.

3 36. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
4 distributor, promoter, or retailer of Fried Anchovy (“Seafood Snacks”), including but not
5 limited to: "SeaKid;" "Crispy Spicy Dilis;" "Crispy Fried Spicy Headless Anchovy;"
6 "Net. Wt. 40 g (1.41 oz);" "Exclusively Distributed By Asian Commodities;" "Product of
7 the Philippines;" "L07L;" "UPC 4 804888 017091"

8 37. Seafood Snacks contains Arsenic.

9 38. Defendants knew or should have known that Arsenic has been identified by the State of
10 California as a chemical known to cause reproductive toxicity and therefore was subject
11 to Proposition 65 warning requirements. Defendants were also informed of the presence
12 of Arsenic in Seafood Snacks within Plaintiff's notice of alleged violations further
13 discussed above at Paragraph 29a.

14 39. Plaintiff's allegations regarding Seafood Snacks 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)*. Seafood Snacks is a consumer product, and, as mentioned herein, exposures
19 to Arsenic took place as a result of such normal and foreseeable consumption and use.

20 40. Plaintiff is informed, believes, and thereon alleges that between March 28, 2019 and the
21 present, each of the Defendants knowingly and intentionally exposed California
22 consumers and users of Seafood Snacks, which Defendants manufactured, distributed, or
23 sold as mentioned above, to Arsenic, 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 Seafood Snacks in California. Defendants know
26 and intend that California consumers will use and consume Seafood Snacks, thereby
27 exposing them to Arsenic. Further, Plaintiff is informed, believes, and thereon alleges

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

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

14 42. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
15 Proposition 65 as to Seafood Snacks 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 Seafood
18 Snacks, so that a separate and distinct violation of Proposition 65 occurred each and
19 every time a person was exposed to Arsenic by Seafood Snacks as mentioned herein.

20 43. 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 44. Based on the allegations herein, Defendants are liable for civil penalties of up to
24 \$2,500.00 per day per individual exposure to Arsenic from Seafood Snacks, pursuant to
25 Health and Safety Code Section 25249.7(b).

26 45. 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 PACIFIC, and DOES**
3 **11-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
4 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

4 **Anchovy**

5 46. Plaintiff repeats and incorporates by reference paragraphs 1 through 45 of this complaint
6 as though fully set forth herein.

7 47. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
8 distributor, promoter, or retailer of Crispy Anchovy (“Anchovy”), including but not
9 limited to: "Carl's "; "Crispy Anchovy Hot & Spicy"; "Net Wt. 1.41 oz (40g)";
10 "Expiration Date: 04/10/22"; "Lot No. CAH0410F"; "UPC 4 809011 259270"

11 48. Anchovy contains Lead.

12 49. Defendants knew or should have known that Lead has been identified by the State of
13 California as a chemical known to cause cancer, and reproductive toxicity and therefore
14 was subject to Proposition 65 warning requirements. Defendants were also informed of
15 the presence of Lead in Anchovy within Plaintiff's notice of alleged violations further
16 discussed above at Paragraph 29b.

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

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

12 52. The principal routes of exposure are through ingestion and inhalation. Persons sustain
13 exposures by eating and consuming Anchovy as well as through direct and indirect hand
14 to mouth contact, hand to mucous membrane, or breathing in particulate matter dispersed
15 from Anchovy.

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

22 54. 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 55. 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 Anchovy, pursuant to Health
27 and Safety Code Section 25249.7(b).

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

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4 **THIRD CAUSE OF ACTION**

5 **(By CONSUMER ADVOCACY GROUP, INC. and against PACIFIC, JANS, and**
6 **DOES 21-30 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
7 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

8 **Seafood Product I**

9 57. Plaintiff repeats and incorporates by reference paragraphs 1 through 56 of this complaint
10 as though fully set forth herein.

11 58. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
12 distributor, promoter, or retailer of Dried Squid (“Seafood Product I”), including but not
13 limited to: "Masarap"; "Dried Steam Squid Punit"; "Net Wt. 3.52 oz (100 g)"; "Best
14 Before 11.28.2022"; "Distributed by Jans Enterprises Corp"; "UPC 8 997032 927066"

15 59. Seafood Product I contains Lead and Cadmium.

16 60. Defendants knew or should have known that Lead and Cadmium have been identified by
17 the State of California as chemicals known to cause cancer, and reproductive toxicity and
18 therefore were subject to Proposition 65 warning requirements. Defendants were also
19 informed of the presence of Lead and Cadmium in Seafood Product I within Plaintiff's
20 notice of alleged violations further discussed above at Paragraph 29c.

21 61. Plaintiff's allegations regarding Seafood Product I 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)*. Seafood Product I is a consumer product, and, as mentioned herein, exposures
26 to Lead and Cadmium took place as a result of such normal and foreseeable consumption
27 and use.

28 62. Plaintiff is informed, believes, and thereon alleges that between May 3, 2019 and the
present, each of the Defendants knowingly and intentionally exposed California

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

17 63. The principal routes of exposure are through ingestion and inhalation. Persons sustain
18 exposures by eating and consuming Seafood Product I as well as through direct and
19 indirect hand to mouth contact, hand to mucous membrane, or breathing in particulate
20 matter dispersed from Seafood Product I.

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

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

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

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

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10 **FOURTH CAUSE OF ACTION**

11 **(By CONSUMER ADVOCACY GROUP, INC. and against PACIFIC,**
12 **EVERLASTING, FORTUNE, and DOES 31-40 for Violations of Proposition 65,**
13 **The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety***
14 ***Code, §§ 25249.5, et seq.*))**

15 **Seafood Product II**

16 68. Plaintiff repeats and incorporates by reference paragraphs 1 through 67 of this complaint
17 as though fully set forth herein.

18 69. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
19 distributor, promoter, or retailer of Dried Salted Rabbitfish ("Seafood Product II"),
20 including but not limited to: "Lucia"; "Dried Salted Rabbitfish (Danggit) Butterfly Cut";
21 "Net Wt. 113g (4oz.)"; "Product of the Philippines"; "Distributed and Imported by
22 Golden Fortune Import and Export Corp."; "UPC 0 54152 30217 8"

23 70. Seafood Product II contains Lead.

24 71. Defendants knew or should have known that Lead has been identified by the State of
25 California as a chemical known to cause cancer, and reproductive toxicity and therefore
26 was subject to Proposition 65 warning requirements. Defendants were also informed of
27 the presence of Lead in Seafood Product II within Plaintiff's notice of alleged violations
28 further discussed above at Paragraph 29d.

1 72. Plaintiff’s allegations regarding Seafood Product II 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)*. Seafood Product II is a consumer product, and, as mentioned herein,
6 exposures to Lead took place as a result of such normal and foreseeable consumption and
7 use.

8 73. Plaintiff is informed, believes, and thereon alleges that between October 25, 2019 and
9 the present, each of the Defendants knowingly and intentionally exposed California
10 consumers and users of Seafood Product II, which Defendants manufactured, distributed,
11 or sold as mentioned above, to Lead, without first providing any type of clear and
12 reasonable warning of such to the exposed persons before the time of exposure.

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

25 74. The principal routes of exposure are through ingestion and inhalation. Persons sustain
26 exposures by eating and consuming Seafood Product II as well as through direct and
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1 indirect hand to mouth contact, hand to mucous membrane, or breathing in particulate
2 matter dispersed from Seafood Product II.

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

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

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

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

18 **FIFTH CAUSE OF ACTION**

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

22 **Seaweed**

23 79. Plaintiff repeats and incorporates by reference paragraphs 1 through 78 of this complaint
24 as though fully set forth herein.

25 80. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
26 distributor, promoter, or retailer of Dried Laver ("Seaweed"), including but not limited
27 to: "Haizhilin"; "Dried Laver"; "Net Wt. 100g (3.5 oz)"; "Producer: Fuzhou Hai Lin

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1 Food Co., Ltd.”; “Product No: Q/LHLS0001S”; “Product of China”; “UPC 6 922738
2 565320”

3 81. Seaweed contains Lead and Cadmium.

4 82. Defendants knew or should have known that Lead and Cadmium have been identified by
5 the State of California as chemicals known to cause cancer, and reproductive toxicity and
6 therefore were subject to Proposition 65 warning requirements. Defendants were also
7 informed of the presence of Lead and Cadmium in Seaweed within Plaintiff’s notice of
8 alleged violations further discussed above at Paragraph 29e.

9 83. Plaintiff’s allegations regarding Seaweed concerns “[c]onsumer products exposure[s],”
10 which “is an exposure that results from a person’s acquisition, purchase, storage,
11 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
12 that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, § 25602(b).*

13 Seaweed is a consumer product, and, as mentioned herein, exposures to Lead and
14 Cadmium took place as a result of such normal and foreseeable consumption and use.

15 84. Plaintiff is informed, believes, and thereon alleges that between January 26, 2020 and the
16 present, each of the Defendants knowingly and intentionally exposed California
17 consumers and users of Seaweed, which Defendants manufactured, distributed, or sold as
18 mentioned above, to Lead and Cadmium, without first providing any type of clear and
19 reasonable warning of such to the exposed persons before the time of exposure.

20 Defendants have distributed and sold Seaweed in California. Defendants know and
21 intend that California consumers will use and consume Seaweed, thereby exposing them
22 to Lead and Cadmium. Further, Plaintiff is informed, believes, and thereon alleges that
23 Defendants are selling Seaweed under a brand or trademark that is owned or licensed by
24 the Defendants or an entity affiliated thereto; have knowingly introduced Lead and
25 Cadmium into Seaweed or knowingly caused Lead and Cadmium to be created in
26 Seaweed; have covered, obscured or altered a warning label that has been affixed to
27 Seaweed by the manufacturer, producer, packager, importer, supplier or distributor of
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1 Seaweed; have received a notice and warning materials for exposure from Seaweed
2 without conspicuously posting or displaying the warning materials; and/or have actual
3 knowledge of potential exposure to Lead and Cadmium from Seaweed. Defendants
4 thereby violated Proposition 65.

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

9 86. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
10 Proposition 65 as to Seaweed 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 Seaweed, 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 Seaweed as mentioned herein.

15 87. 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 88. 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 Seaweed,
20 pursuant to Health and Safety Code Section 25249.7(b).

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

23 24 **PRAYER FOR RELIEF**

25 Plaintiff demands against each of the Defendants as follows:

- 26 1. A permanent injunction mandating Proposition 65-compliant warnings;
- 27 2. Penalties pursuant to Health and Safety Code Section 25249.7, subdivision (b);
- 28 3. Costs of suit;

- 1 4. Reasonable attorney fees and costs; and
2 5. Any further relief that the court may deem just and equitable.
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4 Dated: August 1, 2023

YEROUSHALMI & YEROUSHALMI*

6 *Reuben Yeroushalmi*

7 _____
8 Reuben Yeroushalmi
9 Attorneys for Plaintiff,
10 CONSUMER ADVOCACY GROUP, INC.
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