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By:           D. Drew           Deputy

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12 CONSUMER ADVOCACY GROUP, INC.

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF ALAMEDA**

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

14 Plaintiff,

15 v.

16 EASTLAND FOOD INTERNATIONAL  
17 CORP., a California Corporation;  
18 and DOES 1-20,

19 Defendants.

CASE NO. 23CV041089

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)

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23 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges two causes of action  
24 against defendants EASTLAND FOOD INTERNATIONAL CORP., and DOES 1-20 as  
25 follows:

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27 **THE PARTIES**

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

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

5 **JURISDICTION**

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

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

19 10. Venue is proper in the County of Alameda because one or more of the instances of  
20 wrongful conduct occurred, and continues to occur, in the County of Alameda and/or  
21 because Defendants conducted, and continue to conduct, business in the County of  
22 Alameda with respect to the consumer product that is the subject of this action.

23 **BACKGROUND AND PRELIMINARY FACTS**

24 11. In 1986, California voters approved an initiative to address growing concerns about  
25 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to  
26 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,  
27 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
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1 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code Sections  
2 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources  
3 from contamination, to allow consumers to make informed choices about the products  
4 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
5 fit.

6 12. Proposition 65 requires the Governor of California to publish a list of chemicals known  
7 to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*  
8 *Code* § 25249.8. The list, which the Governor updates at least once a year, contains over  
9 700 chemicals and chemical families. Proposition 65 imposes warning requirements and  
10 other controls that apply to Proposition 65-listed chemicals.

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

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

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

3 16. On October 1, 1987 the Governor of California added Cadmium and Cadmium  
4 Compounds (“Cadmium”) to the list of chemicals known to the State to cause cancer  
5 (*Cal. Code Regs.* tit. 27, § 27001(b)). Pursuant to Health and Safety Code Sections  
6 25249.9 and 25249.10, twenty (20) months after addition of Cadmium to the list of  
7 chemicals known to the State to cause cancer, Cadmium became fully subject to  
8 Proposition 65 warning requirements and discharge prohibitions.

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

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

22 19. On February 27, 1987, the Governor of California added Lead to the list of chemicals  
23 known to the State to cause developmental and reproductive toxicity (*Cal. Code Regs.*  
24 tit. 27, § 27001(c)). Lead is known to the State to cause developmental, female, and  
25 male reproductive toxicity. Pursuant to Health and Safety Code Sections 25249.9 and  
26 25249.10, twenty (20) months after addition of Lead to the list of chemicals known to  
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1 the State to cause developmental and reproductive toxicity, Lead became fully subject to  
2 Proposition 65 warning requirements and discharge prohibitions.

3 **SATISFACTION OF PRIOR NOTICE**

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

6 a. On or about August 18, 2022, Plaintiff gave notice of alleged violations of  
7 Health and Safety Code Section 25249.6, concerning consumer products  
8 exposures subject to a private action to EASTLAND FOOD, and to the  
9 California Attorney General, County District Attorneys, and City Attorneys for  
10 each city containing a population of at least 750,000 people in whose  
11 jurisdictions the violations allegedly occurred, concerning the Dried Seasoned  
12 Squid.

13 i. On or about July 3, 2023, Plaintiff gave notice of alleged violations of  
14 Health and Safety Code Section 25249.6, concerning consumer products  
15 exposures subject to a private action to EASTLAND FOOD, and to the  
16 California Attorney General, County District Attorneys, and City  
17 Attorneys for each city containing a population of at least 750,000  
18 people in whose jurisdictions the violations allegedly occurred,  
19 concerning the Dried Seasoned Squid.

20 b. On or about June 13, 2023, Plaintiff gave notice of alleged violations of Health  
21 and Safety Code Section 25249.6, concerning consumer products exposures  
22 subject to a private action to EASTLAND FOOD, and to the California Attorney  
23 General, County District Attorneys, and City Attorneys for each city containing  
24 a population of at least 750,000 people in whose jurisdictions the violations  
25 allegedly occurred, concerning the Crispy Sardine.

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

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

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

16 24. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
17 gave notice of the alleged violations to EASTLAND FOOD, and the public prosecutors  
18 referenced in Paragraph 21.

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

### 22 **FIRST CAUSE OF ACTION**

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

#### 26 **Seafood Product**

27 26. Plaintiff repeats and incorporates by reference paragraphs 1 through 23 of this complaint  
28 as though fully set forth herein.

1 27. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
2 distributor, promoter, or retailer of Dried Seasoned Squid (“Dried Squid”), including but  
3 not limited to "Mr. Squid"; "Rolled Seasoned Squid"; "Net Wt. 1.06 oz (30 g)";  
4 "Distributed By Eastland Food Corporation"; "BBE 06/02/2022"; "Product of Thailand";  
5 "UPC 8 852861 002011", “Mr. Squid”; “Rolled Seasoned Squid”; “Mild Spicy”;  
6 “Delicious & Fun”; “Net Wt. 1.06 oz (30 g)”; “BBE: Oct 22 2022”; “Distributed by:  
7 Eastland Food Corporation”; “Manufactured by: T.Thai Snack Foods Co., Ltd.”;  
8 “Product of Thailand”; “UPC 8852861002011”.

9 28. Dried Squid contains Cadmium.

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

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

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

11        32. The principal routes of exposure are through ingestion, especially direct (oral) ingestion,  
12          inhalation, and trans-dermal absorption. Persons sustain exposures primarily by eating  
13          and consuming Dried Squid, and additionally by handling Dried Squid without wearing  
14          gloves or any other personal protective equipment, or by touching bare skin or mucous  
15          membranes with gloves after handling Dried Squid, as well as through direct and indirect  
16          hand to mouth contact, hand to mucous membrane, or even breathing in particulate  
17          matter dispersed from Dried Squid.

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

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

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

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

6 **SECOND CAUSE OF ACTION**

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

10 **Seafood Snack**

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

13 38. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
14 distributor, promoter, or retailer of Crispy Sardine (“Crispy Sardine”), including but not  
15 limited or identified as “Chaolay;” “Crispy White Sardine;” “Original;” “Net. WT. 3.53  
16 Oz (100g);” “Best Before: 12/15/2022;” “Product of Thailand;” “UPC 083737401104”.

17 39. Crispy Sardine contains Lead.

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

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

1 42. Plaintiff is informed, believes, and thereon alleges that between June 13, 2020 and the  
2 present, each of the Defendants knowingly and intentionally exposed California  
3 consumers and users of Crispy Sardine, which Defendants manufactured, distributed, or  
4 sold as mentioned above, to Lead, without first providing any type of clear and  
5 reasonable warning of such to the exposed persons before the time of exposure.  
6 Defendants have distributed and sold Crispy Sardine in California. Defendants know  
7 and intend that California consumers will use and consume Crispy Sardine, thereby  
8 exposing them to Lead. Further, Plaintiff is informed, believes, and thereon alleges that  
9 Defendants are selling Crispy Sardine under a brand or trademark that is owned or  
10 licensed by the Defendants or an entity affiliated thereto; have knowingly introduced  
11 Lead into Crispy Sardine or knowingly caused Lead to be created in Crispy Sardine;  
12 have covered, obscured or altered a warning label that has been affixed to Crispy Sardine  
13 by the manufacturer, producer, packager, importer, supplier or distributor of Crispy  
14 Sardine; have received a notice and warning materials for exposure from Crispy Sardine  
15 without conspicuously posting or displaying the warning materials; and/or have actual  
16 knowledge of potential exposure to Lead from Crispy Sardine. Defendants thereby  
17 violated Proposition 65.

18 43. The principal routes of exposure are through ingestion, especially direct (oral) ingestion,  
19 inhalation, and trans-dermal absorption. Persons sustain exposures primarily by eating  
20 and consuming Crispy Sardine, and additionally by handling Crispy Sardine without  
21 wearing gloves or any other personal protective equipment, or by touching bare skin or  
22 mucous membranes with gloves after handling Crispy Sardine, as well as through direct  
23 and indirect hand to mouth contact, hand to mucous membrane, or even breathing in  
24 particulate matter dispersed from Crispy Sardine.

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

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

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

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

12 **PRAYER FOR RELIEF**

13 Plaintiff demands against each of the Defendants as follows:

14 48. A permanent injunction mandating Proposition 65-compliant warnings;

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

16 50. Costs of suit;

17 51. Reasonable attorney fees and costs; and

18 52. Any further relief that the court may deem just and equitable.

19  
20 Dated: November 9, 2023

YEROUSHALMI & YEROUSHALMI\*

21  
22 /s/ Reuben Yeroushalmi

23 Reuben Yeroushalmi  
24 Attorney for Plaintiff,  
25 CONSUMER ADVOCACY GROUP, INC.  
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