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9 Attorneys for Plaintiff,
10 CONSUMER ADVOCACY GROUP, INC.

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 WALMART, INC., an Arkansas
18 Corporation;
19 WAL-MART.COM USA, LLC, a California
20 Limited Liability Company;
21 ATLPAC TRADING COMPANY, INC., a
22 California Company;
23 and DOES 1-10,

24 Defendants.

CASE NO. **24CV064793**

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)

25 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges one cause of action against
26 defendants WALMART, INC.; WAL-MART.COM USA, LLC; ATLPAC TRADING
27 COMPANY., and DOES 1-10 as follows:

28 **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 WALMART, INC. (“WALMART”) is a California Corporation qualified to
7 do business in California, and doing business in the State of California at all relevant
8 times herein.
- 9 3. Defendant WAL-MART.COM USA, LLC (“WAL-MART.COM”) is a California
10 Limited Liability Company, qualified to do business and doing business in the State of
11 California at all relevant times herein.
- 12 4. Defendant ATLAPAC TRADING COMPANY, INC. (“ATLAPAC”) is a California
13 Company, qualified to do business and doing business in the State of California at all
14 relevant times herein.
- 15 5. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-10,
16 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
17 Complaint to allege their true names and capacities when ascertained. Plaintiff is
18 informed, believes, and thereon alleges that each fictitiously named defendant is
19 responsible in some manner for the occurrences herein alleged and the damages caused
20 thereby.
- 21 6. At all times mentioned herein, the term “Defendants” includes WALMART, WAL-
22 MART.COM, ATLAPAC, and DOES 1-10.
- 23 7. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
24 times mentioned herein have conducted business within the State of California.
- 25 8. Upon information and belief, at all times relevant to this action, each of the Defendants,
26 including DOES 1-10, was an agent, servant, or employee of each of the other
27 Defendants. In conducting the activities alleged in this Complaint, each of the
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1 Defendants was acting within the course and scope of this agency, service, or
2 employment, and was acting with the consent, permission, and authorization of each of
3 the other Defendants. All actions of each of the Defendants alleged in this Complaint
4 were ratified and approved by every other Defendant or their officers or managing
5 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the
6 alleged wrongful conduct of each of the other Defendants.

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

11 **JURISDICTION**

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

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

25 12. Venue is proper in the County of Alameda because one or more of the instances of
26 wrongful conduct occurred, and continues to occur, in the County of Alameda and/or

1 because Defendants conducted, and continue to conduct, business in the County of
2 Alameda with respect to the consumer product that is the subject of this action.

3 **BACKGROUND AND PRELIMINARY FACTS**

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

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

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

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

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

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

8 18. On October 1, 1987 the Governor of California added Cadmium and Cadmium
9 Compounds (“Cadmium”) to the list of chemicals known to the State to cause cancer
10 (*Cal. Code Regs.* tit. 27, § 27001(b)). Pursuant to Health and Safety Code Sections
11 25249.9 and 25249.10, twenty (20) months after addition of Cadmium to the list of
12 chemicals known to the State to cause cancer, Cadmium became fully subject to
13 Proposition 65 warning requirements and discharge prohibitions.

14 19. On May 1, 1997, the Governor of California added Cadmium to the list of chemicals
15 known to the State to cause developmental and reproductive toxicity (*Cal. Code Regs.*
16 tit. 27, § 27001(c)). Cadmium is known to the State to cause developmental, and male
17 reproductive toxicity. Pursuant to Health and Safety Code Sections 25249.9 and
18 25249.10, twenty (20) months after addition of Cadmium to the list of chemicals known
19 to the State to cause developmental and reproductive toxicity, Cadmium became fully
20 subject to Proposition 65 warning requirements and discharge prohibitions.

21 **SATISFACTION OF PRIOR NOTICE**

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

- 24 a. On or about July 28, 2023, Plaintiff gave notice of alleged violations of Health
25 and Safety Code Section 25249.6, concerning consumer products exposures
26 subject to a private action to WALMART, WAL-MART.COM, ATLAPAC, and
27 to the California Attorney General, County District Attorneys, and City

1 Attorneys for each city containing a population of at least 750,000 people in
2 whose jurisdictions the violations allegedly occurred, concerning the Mackerel.

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

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

15 23. 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 24. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
19 gave notice of the alleged violations to WALMART, WAL-MART.COM, ATLAPAC,
20 and the public prosecutors referenced in Paragraph 20.

21 25. 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 WALMART, WAL-**
26 **MART.COM, ATLAPAC, and DOES 1-10 for Violations of Proposition 65, The**
27 **Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code,***
§§ 25249.5, et seq.))

1 **Seafood Products**

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

4 27. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
5 distributor, promoter, or retailer of Mackerel (“Mackerel”), including but not limited to
6 “California Girl”; “Pacific Mackerel in its Natural Oil”; “Packed in Water”; “Net Wt. 15
7 oz (425 g)”; “Product of Ecuador”; “Distributed By: Atlapac Trading Co. Inc.”;
8 “L:C5WA26A2”; “Best By: 26/Jan/2025”; “UPC 052391481500”.

9 28. Mackerel contains cadmium.

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

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

21 31. Plaintiff is informed, believes, and thereon alleges that between July 28, 2020 and the
22 present, each of the Defendants knowingly and intentionally exposed California
23 consumers and users of Mackerel, which Defendants manufactured, distributed, or sold
24 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 Mackerel in California. Defendants know and
27 intend that California consumers will use and consume Mackerel, thereby exposing them

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1 to cadmium. Further, Plaintiff is informed, believes, and thereon alleges that Defendants
2 are selling Mackerel under a brand or trademark that is owned or licensed by the
3 Defendants or an entity affiliated thereto; have knowingly introduced cadmium into
4 Mackerel or knowingly caused cadmium to be created in Mackerel; have covered,
5 obscured or altered a warning label that has been affixed to Mackerel by the
6 manufacturer, producer, packager, importer, supplier or distributor of Mackerel; have
7 received a notice and warning materials for exposure from Mackerel without
8 conspicuously posting or displaying the warning materials; and/or have actual
9 knowledge of potential exposure to cadmium from Mackerel. 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 Mackerel 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
22 Mackerel, so that a separate and distinct violation of Proposition 65 occurred each and
23 every time a person was exposed to cadmium by Mackerel 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 Mackerel, 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.

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7 **PRAYER FOR RELIEF**

8 Plaintiff demands against each of the Defendants as follows:

- 9 1. A permanent injunction mandating Proposition 65-compliant warnings;
10 2. Penalties pursuant to Health and Safety Code Section 25249.7, subdivision (b);
11 3. Costs of suit;
12 4. Reasonable attorney fees and costs; and
13 5. Any further relief that the court may deem just and equitable.

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15 Dated: February 21, 2024

YEROUSHALMI & YEROUSHALMI*

16
17 */s/ Reuben Yeroushalmi*

18 _____
19 Reuben Yeroushalmi
20 Attorneys for Plaintiff,
21 CONSUMER ADVOCACY GROUP, INC.