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Superior Court of California,
County of Alameda

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7 CONSUMER ADVOCACY GROUP, INC.

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF ALAMEDA**

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

12 Plaintiff,

13 v.

14 ABACUS BUSINESS CAPITAL, INC. DBA
15 ISLAND PACIFIC SUPERMARKETS,
16 INC., a California Corporation;
17 CENTURY PACIFIC NORTH AMERICA
18 ENTERPRISE, INC., a California
19 Corporation;
20 CENTURY PACIFIC FOOD, INC., a
21 Business Entity;
22 and DOES 1-50,

23 Defendants.

CASE NO. **24CV078293**

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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27 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges five causes of action
28 against defendants ABACUS BUSINESS CAPITAL, INC. DBA ISLAND PACIFIC

1 SUPERMARKETS, INC., CENTURY PACIFIC NORTH AMERICA ENTERPRISE, INC.,
2 CENTURY PACIFIC FOOD, INC., and DOES 1-50 as follows:

3 **THE PARTIES**

- 4 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an
5 organization qualified to do business in the State of California. CAG is a person within
6 the meaning of Health and Safety Code Section 25249.11, subdivision (a). CAG, acting
7 as a private attorney general, brings this action in the public interest as defined under
8 Health and Safety Code Section 25249.7, subdivision (d).
- 9 2. Defendant ABACUS BUSINESS CAPITAL, INC. DBA ISLAND PACIFIC
10 SUPERMARKETS, INC. (“ABACUS”) is a California Corporation, qualified to do
11 business in California, and doing business in the State of California at all relevant times
12 herein.
- 13 3. Defendant CENTURY PACIFIC NORTH AMERICA INTERPRISE, INC.
14 (“CENTURY NORTH”) is a California Corporation, qualified to do business in the State
15 of California, and doing business in the State of California at all relevant times herein.
- 16 4. Defendant CENTURY PACIFIC FOOD, INC. (“CENTURY PACIFIC”) is a Business
17 Entity, and doing business in the State of California at all relevant times herein.
- 18 5. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-50,
19 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
20 Complaint to allege their true names and capacities when ascertained. Plaintiff is
21 informed, believes, and thereon alleges that each fictitiously named defendant is
22 responsible in some manner for the occurrences herein alleged and the damages caused
23 thereby.
- 24 6. At all times mentioned herein, the term “Defendants” includes ABACUS, CENTURY
25 NORTH, CENTURY PACIFIC, and DOES 1-50.
- 26 7. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
27 times mentioned herein have conducted business within the State of California.

- 1 8. Upon information and belief, at all times relevant to this action, each of the Defendants,
2 including DOES 1-50, was an agent, servant, or employee of each of the other
3 Defendants. In conducting the activities alleged in this Complaint, each of the
4 Defendants was acting within the course and scope of this agency, service, or
5 employment, and was acting with the consent, permission, and authorization of each of
6 the other Defendants. All actions of each of the Defendants alleged in this Complaint
7 were ratified and approved by every other Defendant or their officers or managing
8 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the
9 alleged wrongful conduct of each of the other Defendants.
- 10 9. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
11 Defendants was a person doing business within the meaning of Health and Safety Code
12 Section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more
13 employees at all relevant times.

14 **JURISDICTION**

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

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

5 **BACKGROUND AND PRELIMINARY FACTS**

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

15 14. Proposition 65 requires the Governor of California to publish a list of chemicals known
16 to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*
17 *Code* § 25249.8. The list, which the Governor updates at least once a year, contains over
18 700 chemicals and chemical families. Proposition 65 imposes warning requirements and
19 other controls that apply to Proposition 65-listed chemicals.

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

26 16. Proposition 65 provides that any person "violating or threatening to violate" the statute
27 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §
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1 25249.7. "Threaten to violate" means "to create a condition in which there is a
2 substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).
3 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
4 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

5 17. Plaintiff identified certain practices of manufacturers and distributors of Sardines I,
6 Dried Herring, Dried Anchovy, Sardines II, and Tinapa of exposing, knowingly and
7 intentionally, persons in California to Lead and Lead Compounds and Cadmium and
8 Cadmium Compounds, of such products without first providing clear and reasonable
9 warnings of such to the exposed persons prior to the time of exposure. Plaintiff later
10 discerned that Defendants engaged in such practice.

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

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

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

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

10 **SATISFACTION OF PRIOR NOTICE**

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

- 13 a. On or about August 8, 2023, Plaintiff gave notice of alleged violations of Health
14 and Safety Code Section 25249.6, concerning consumer products exposures
15 subject to a private action to ABACUS, CENTURY NORTH, CENTURY
16 PACIFIC, and to the California Attorney General, County District Attorneys,
17 and City Attorneys for each city containing a population of at least 750,000
18 people in whose jurisdictions the violations allegedly occurred, concerning the
19 Sardines I.
- 20 b. On or about October 26, 2023, Plaintiff gave notice of alleged violations of
21 Health and Safety Code Section 25249.6, concerning consumer products
22 exposures subject to a private action to ABACUS, and to the California
23 Attorney General, County District Attorneys, and City Attorneys for each city
24 containing a population of at least 750,000 people in whose jurisdictions the
25 violations allegedly occurred, concerning the Dried Herring.
- 26 c. On or about October 26, 2023, Plaintiff gave notice of alleged violations of
27 Health and Safety Code Section 25249.6, concerning consumer products

1 exposures subject to a private action to ABACUS, and to the California
2 Attorney General, County District Attorneys, and City Attorneys for each city
3 containing a population of at least 750,000 people in whose jurisdictions the
4 violations allegedly occurred, concerning the Dried Anchovy.

5 d. On or about December 22, 2023, 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 ABACUS, and to the California
8 Attorney General, County District Attorneys, and City Attorneys for each city
9 containing a population of at least 750,000 people in whose jurisdictions the
10 violations allegedly occurred, concerning the Tinapa.

11 e. On or about December 22, 2023, Plaintiff gave notice of alleged violations of
12 Health and Safety Code Section 25249.6, concerning consumer products
13 exposures subject to a private action to ABACUS, and to the California
14 Attorney General, County District Attorneys, and City Attorneys for each city
15 containing a population of at least 750,000 people in whose jurisdictions the
16 violations allegedly occurred, concerning the Sardines II.

17 23. 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 and Cadmium, and the corporate structure of each of the
20 Defendants.

21 24. 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
23 Plaintiff who executed the certificate had consulted with at least one person with relevant
24 and appropriate expertise who reviewed data regarding the exposures to Lead and
25 Cadmium, the subject Proposition 65-listed chemical of this action. Based on that
26 information, the attorney for Plaintiff who executed the Certificate of Merit believed
27 there was a reasonable and meritorious case for this private action. The attorney for
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1 Plaintiff attached to the Certificate of Merit served on the Attorney General the
2 confidential factual information sufficient to establish the basis of the Certificate of
3 Merit.

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

7 26. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
8 gave notice of the alleged violations to ABACUS, CENTURY NORTH, CENTURY
9 PACIFIC, and the public prosecutors referenced in Paragraph 22.

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

13 **FIRST CAUSE OF ACTION**

14 **(By CONSUMER ADVOCACY GROUP, INC. and against ABACUS, CENTURY**
15 **NORTH, CENTURY PACIFIC, and DOES 1-10 for Violations of Proposition 65,**
16 **The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety***
17 ***Code, §§ 25249.5, et seq.*))**

18 **Seafood Products**

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

21 29. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
22 distributor, promoter, or retailer of Sardines ("Sardines I"), including but not limited to:
23 "Blue Bay"; "Premium Sardines in Tomato Sauce"; "Net Weight 5.5 oz (155 g)";
24 "Manufactured for: Century Pacific North American Enterprises, Inc."; "Produced in the
25 Philippines"; "CTSFD10N0424A"; "CPG130"; "BBE: NOV 2023"; "UPC
26 748485200910".

27 30. Sardines I contain Cadmium.
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- 1 31. Defendants knew or should have known that Cadmium has been identified by the State
2 of California as a chemical known to cause cancer, and reproductive toxicity and
3 therefore was subject to Proposition 65 warning requirements. Defendants were also
4 informed of the presence of Cadmium in Sardines I within Plaintiff's notice of alleged
5 violations further discussed above at Paragraph 22a.
- 6 32. Plaintiff's allegations regarding Sardines I concerns "[c]onsumer products exposure[s],"
7 which "is an exposure that results from a person's acquisition, purchase, storage,
8 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
9 that results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*.
10 Sardines I are consumer products, and, as mentioned herein, exposures to Cadmium took
11 place as a result of such normal and foreseeable consumption and use.
- 12 33. Plaintiff is informed, believes, and thereon alleges that between August 8, 2020 and the
13 present, each of the Defendants knowingly and intentionally exposed California
14 consumers and users of Sardines I, which Defendants manufactured, distributed, or sold
15 as mentioned above, to Cadmium, without first providing any type of clear and
16 reasonable warning of such to the exposed persons before the time of exposure.
17 Defendants have distributed and sold Sardines I in California. Defendants know and
18 intend that California consumers will use and consume Sardines I, thereby exposing
19 them to Cadmium. Further, Plaintiff is informed, believes, and thereon alleges that
20 Defendants are selling Sardines I under a brand or trademark that is owned or licensed
21 by the Defendants or an entity affiliated thereto; have knowingly introduced Cadmium
22 into Sardines I or knowingly caused Cadmium to be created in Sardines I; have covered,
23 obscured or altered a warning label that has been affixed to Sardines I by the
24 manufacturer, producer, packager, importer, supplier or distributor of Sardines I; have
25 received a notice and warning materials for exposure from Sardines I without
26 conspicuously posting or displaying the warning materials; and/or have actual

1 knowledge of potential exposure to Cadmium from Sardines I. Defendants thereby
2 violated Proposition 65.

3 34. The principal routes of exposure are through ingestion, especially direct (oral) ingestion,
4 inhalation, and trans-dermal absorption. Persons sustain exposures primarily by eating
5 and consuming Sardines I, and additionally by handling Sardines I without wearing
6 gloves or any other personal protective equipment, or by touching bare skin or mucous
7 membranes with gloves after handling Sardines I, as well as through direct and indirect
8 hand to mouth contact, hand to mucous membrane, or even breathing in particulate
9 matter dispersed from Sardines I.

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

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

19 37. Based on the allegations herein, Defendants are liable for civil penalties of up to
20 \$2,500.00 per day per individual exposure to Cadmium from Sardines I, pursuant to
21 Health and Safety Code Section 25249.7(b).

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

24 **SECOND CAUSE OF ACTION**

25 **(By CONSUMER ADVOCACY GROUP, INC. and against ABACUS, and DOES**
26 **11-20 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 Products**

1 39. Plaintiff repeats and incorporates by reference paragraphs 1 through 38 of this complaint
2 as though fully set forth herein.

3 40. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
4 distributor, promoter, or retailer of Dried Herring (“Herring”), including but not limited
5 to: “Island Pacific”; “TUYO”; “TAMBAN”; “DRIED SALTED HERRING”; “DRIED
6 FISH”; “WILD CAUGHT”; “NET WT. 8 OZ (226g)”; “0000000175722”.

7 41. Herring contains Lead and Cadmium.

8 42. Defendants knew or should have known that Lead and Cadmium have been identified by
9 the State of California as chemicals known to cause cancer, and reproductive toxicity and
10 therefore was subject to Proposition 65 warning requirements. Defendants were also
11 informed of the presence of Lead and Cadmium in Herring within Plaintiff’s notice of
12 alleged violations further discussed above at Paragraph 22b.

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

17 Herring is a consumer product, and, as mentioned herein, exposures to Lead and
18 Cadmium took place as a result of such normal and foreseeable consumption and use.

19 44. Plaintiff is informed, believes, and thereon alleges that between October 26, 2020 and
20 the present, each of the Defendants knowingly and intentionally exposed California
21 consumers and users of Herring, which Defendants manufactured, distributed, or sold as
22 mentioned above, to Lead and Cadmium, without first providing any type of clear and
23 reasonable warning of such to the exposed persons before the time of exposure.

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

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

16 46. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
17 Proposition 65 as to Herring 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 Herring, so that
20 a separate and distinct violation of Proposition 65 occurred each and every time a person
21 was exposed to Lead and Cadmium by Herring as mentioned herein.

22 47. 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 48. 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 and Cadmium from Herring, pursuant
27 to Health and Safety Code Section 25249.7(b).

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1 49. 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 ABACUS, and DOES**
6 **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 Products**

9 50. Plaintiff repeats and incorporates by reference paragraphs 1 through 49 of this complaint
10 as though fully set forth herein.

11 51. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
12 distributor, promoter, or retailer of Dried Anchovy (“Anchovy”), including but not
13 limited to: “Island Pacific”; “TUYO”; “DILIS”; “DRIED SALTED ANCHOVY”;
14 “DRIED FISH”; “WILD CAUGHT”; “NET WT. 8 OZ (226g)”; “0000000175753”;
15 “PRODUCT OF VIETNAM”.

16 52. Anchovy contains Cadmium.

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

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

28 55. Plaintiff is informed, believes, and thereon alleges that between October 26, 2020 and
the present, each of the Defendants knowingly and intentionally exposed California

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

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

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

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

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

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

11 **FOURTH CAUSE OF ACTION**

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

15 **Seafood Products**

16 61. Plaintiff repeats and incorporates by reference paragraphs 1 through 60 of this complaint
17 as though fully set forth herein.

18 62. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
19 distributor, promoter, or retailer of Tinapa, including but not limited to: “Ado’s
20 KITCHEN”; “GOURMET TINAPA”; “In Fresh Herbs and Hot Corn Oil”; “Net. Wt. 8
21 oz (225g)”; “PRODUCT OF THE PHILIPPINES”; “UPC 4806533190234”.

22 63. Tinapa contains Lead.

23 64. Defendants knew or should have known that Lead has been identified by the State of
24 California as chemicals known to cause cancer, and reproductive toxicity and therefore
25 was subject to Proposition 65 warning requirements. Defendants were also informed of
26 the presence of Lead in Tinapa within Plaintiff’s notice of alleged violations further
27 discussed above at Paragraph 22d.

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

7 66. Plaintiff is informed, believes, and thereon alleges that between December 22, 2020 and
8 the present, each of the Defendants knowingly and intentionally exposed California
9 consumers and users of Tinapa, which Defendants manufactured, distributed, or sold as
10 mentioned above, to Lead, without first providing any type of clear and reasonable
11 warning of such to the exposed persons before the time of exposure. Defendants have
12 distributed and sold Tinapa in California. Defendants know and intend that California
13 consumers will use and consume Tinapa, thereby exposing them to Lead. Further,
14 Plaintiff is informed, believes, and thereon alleges that Defendants are selling Tinapa
15 under a brand or trademark that is owned or licensed by the Defendants or an entity
16 affiliated thereto; have knowingly introduced Lead into Tinapa or knowingly caused
17 Lead to be created in Tinapa; have covered, obscured or altered a warning label that has
18 been affixed to Tinapa by the manufacturer, producer, packager, importer, supplier or
19 distributor of Tinapa; have received a notice and warning materials for exposure from
20 Tinapa without conspicuously posting or displaying the warning materials; and/or have
21 actual knowledge of potential exposure to Lead from Tinapa. Defendants thereby
22 violated Proposition 65.

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

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

9 69. 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 70. Based on the allegations herein, Defendants are liable for civil penalties of up to
13 \$2,500.00 per day per individual exposure to Lead from Tinapa, pursuant to Health and
14 Safety Code Section 25249.7(b).

15 71. 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 ABACUS, and DOES**
19 **41-50 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
20 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

21 **Seafood Products**

22 72. Plaintiff repeats and incorporates by reference paragraphs 1 through 71 of this complaint
23 as though fully set forth herein.

24 73. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
25 distributor, promoter, or retailer of Sardines ("Sardines II"), including but not limited to:
26 "Ado's KITCHEN"; "GOURMET SARDINES"; "In Fresh Herbs and Hot Corn Oil";
27 "Net. Wt. 8 oz (225g)"; "PRODUCT OF THE PHILIPPINES"; "UPC 4806533190227".

28 74. Sardines II contains Lead.

1 75. Defendants knew or should have known that Lead has been identified by the State of
2 California as chemicals known to cause cancer, and reproductive toxicity and therefore
3 was subject to Proposition 65 warning requirements. Defendants were also informed of
4 the presence of Lead in Sardines II within Plaintiff's notice of alleged violations further
5 discussed above at Paragraph 22e.

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

12 77. Plaintiff is informed, believes, and thereon alleges that between December 22, 2020 and
13 the present, each of the Defendants knowingly and intentionally exposed California
14 consumers and users of Sardines II, which Defendants manufactured, distributed, or sold
15 as mentioned above, to Lead, without first providing any type of clear and reasonable
16 warning of such to the exposed persons before the time of exposure. Defendants have
17 distributed and sold Sardines II in California. Defendants know and intend that
18 California consumers will use and consume Sardines II, thereby exposing them to Lead.
19 Further, Plaintiff is informed, believes, and thereon alleges that Defendants are selling
20 Sardines II under a brand or trademark that is owned or licensed by the Defendants or an
21 entity affiliated thereto; have knowingly introduced Lead into Sardines II or knowingly
22 caused Lead to be created in Sardines II; have covered, obscured or altered a warning
23 label that has been affixed to Sardines II by the manufacturer, producer, packager,
24 importer, supplier or distributor of Sardines II; have received a notice and warning
25 materials for exposure from Sardines II without conspicuously posting or displaying the
26 warning materials; and/or have actual knowledge of potential exposure to Lead from
27 Sardines II. Defendants thereby violated Proposition 65.

28

1 78. The principal routes of exposure are through ingestion, especially direct (oral) ingestion,
2 inhalation, and trans-dermal absorption. Persons sustain exposures primarily by eating
3 and consuming Sardines II, and additionally by handling Sardines II without wearing
4 gloves or any other personal protective equipment, or by touching bare skin or mucous
5 membranes with gloves after handling Sardines II, as well as through direct and indirect
6 hand to mouth contact, hand to mucous membrane, or even breathing in particulate
7 matter dispersed from Sardines II.

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

14 80. 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 81. 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 from Sardines II, pursuant to Health
19 and Safety Code Section 25249.7(b).

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

22 **PRAYER FOR RELIEF**

23 Plaintiff demands against each of the Defendants as follows:

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

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Dated: June 3, 2024

YEROUSHALMI & YEROUSHALMI*

/s/ Reuben Yeroushalmi
Reuben Yeroushalmi
Attorneys for Plaintiff,
CONSUMER ADVOCACY GROUP, INC.