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9 CONSUMER ADVOCACY GROUP, INC.

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Superior Court of California,  
County of Los Angeles  
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David W. Slayton,  
Executive Officer/Clerk of Court,  
By Y. Ayala, Deputy Clerk

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF LOS ANGELES**

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

14 Plaintiff,

15 v.

16 PHILIPPINE FOODTRADE  
17 CORPORATION, a California Corporation;  
18 and DOES 1-20,

19 Defendants.

CASE NO. **25STCV03658**

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 \$35,000)

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26 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges two causes of action  
27 against defendants PHILIPPINE FOODTRADE CORPORATION, and DOES 1-20 as follows:  
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**THE PARTIES**

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

agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged wrongful conduct of each of the other Defendants.

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

### **JURISDICTION**

8. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article VI, Section 10, which grants the Superior Court original jurisdiction in all causes except those given by statute to other trial courts. This Court has jurisdiction over this action pursuant to Health and Safety Code Section 25249.7, which allows enforcement of violations of Proposition 65 in any Court of competent jurisdiction.
9. This Court has jurisdiction over Defendants named herein because Defendants either reside or are located in this State or are foreign corporations authorized to do business in California, are registered with the California Secretary of State, or who do sufficient business in California, have sufficient minimum contacts with California, or otherwise intentionally avail themselves of the markets within California through their manufacture, distribution, promotion, marketing, or sale of their products within California to render the exercise of jurisdiction by the California courts permissible under traditional notions of fair play and substantial justice.
10. Venue is proper in the County of Los Angeles because one or more of the instances of wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or because Defendants conducted, and continue to conduct, business in the County of Los Angeles with respect to the consumer product that is the subject of this action.

### **BACKGROUND AND PRELIMINARY FACTS**

11. In 1986, California voters approved an initiative to address growing concerns about exposure to toxic chemicals and declared their right “[t]o be informed about exposures to

chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp., Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code Sections 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources from contamination, to allow consumers to make informed choices about the products they buy, and to enable persons to protect themselves from toxic chemicals as they see fit.

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

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

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

15. Plaintiff identified certain practices of manufacturers and distributors of Dried Herring of exposing, knowingly and intentionally, persons in California to Lead and Lead Compounds, Cadmium and Cadmium Compounds of such products without first

1 providing clear and reasonable warnings of such to the exposed persons prior to the time  
2 of exposure. Plaintiff later discerned that Defendants engaged in such practice.

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

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

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

23 **SATISFACTION OF PRIOR NOTICE**

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

- 26 a. On or about August 27, 2024, Plaintiff gave notice of alleged violations of  
27 Health and Safety Code Section 25249.6, concerning consumer products  
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1 exposures subject to a private action to PHILIPPINE FOODTRADE, and to the  
2 California Attorney General, County District Attorneys, and City Attorneys for  
3 each city containing a population of at least 750,000 people in whose  
4 jurisdictions the violations allegedly occurred, concerning the Dried Herring I.  
5 b. On or about September 3, 2024, Plaintiff gave notice of alleged violations of  
6 Health and Safety Code Section 25249.6, concerning consumer products  
7 exposures subject to a private action to PHILIPPINE FOODTRADE, and to the  
8 California Attorney General, County District Attorneys, and City Attorneys for  
9 each city containing a population of at least 750,000 people in whose  
10 jurisdictions the violations allegedly occurred, concerning the Dried Herring II.

11 20. Before sending the notice of alleged violations, Plaintiff investigated the consumer  
12 products involved, the likelihood that such products would cause users to suffer  
13 significant exposures to Lead and Cadmium, and the corporate structure of each of the  
14 Defendants.

15 21. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the  
16 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for  
17 Plaintiff who executed the certificate had consulted with at least one person with relevant  
18 and appropriate expertise who reviewed data regarding the exposures to Lead and  
19 Cadmium, the subject Proposition 65-listed chemical of this action. Based on that  
20 information, the attorney for Plaintiff who executed the Certificate of Merit believed  
21 there was a reasonable and meritorious case for this private action. The attorney for  
22 Plaintiff attached to the Certificate of Merit served on the Attorney General the  
23 confidential factual information sufficient to establish the basis of the Certificate of  
24 Merit.

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

23. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff gave notice of the alleged violations to PHILIPPINE FOODTRADE, and the public prosecutors referenced in Paragraph 19.

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

### **FIRST CAUSE OF ACTION**

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

#### **Dried Seafood I**

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

26. Each of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor, promoter, or retailer of Dried Herring (“Dried Herring I”), identified as: “A1 Tropics Since 1970”; “KEEP REFRIGERATED”; “A Filipino Favorite”; “Dried Salted Herring”; “Tunsoy Headless Fully Eviscerated”; Net Wt: 6 oz. (170 grams); “Trust Tropics”; “Product of the Philippines”; “EAT BEFORE CONSUMPTION”; “Lot No 71022237 5228”; “030283010038”.

27. Dried Herring I contains Lead and Cadmium.

28. Defendants knew or should have known that the State of California has identified Lead as a chemical known to cause cancer, reproductive toxicity, and developmental toxicity and Cadmium as a chemical known to cause reproductive toxicity and developmental toxicity, and therefore was subject to Proposition 65 warning requirements. Defendants were also informed of the presence of Lead and Cadmium in Dried Herring I within Plaintiff’s notice of alleged violations further discussed above at Paragraph 19a.

- 1 29. Plaintiff's allegations regarding Dried Herring I 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)*. Dried Herring I are consumer products, and, as mentioned herein, exposures  
6 to Lead and Cadmium took place as a result of such normal and foreseeable consumption  
7 and use.
- 8 30. Plaintiff is informed, believes, and thereon alleges that between August 27, 2021 and the  
9 present, each of the Defendants knowingly and intentionally exposed California  
10 consumers and users of Dried Herring I, which Defendants manufactured, distributed, or  
11 sold as mentioned above, to Lead and Cadmium, without first providing any type of clear  
12 and reasonable warning of such to the exposed persons before the time of exposure.  
13 Defendants have distributed and sold Dried Herring I in California. Defendants know  
14 and intend that California consumers will use and consume Dried Herring I, thereby  
15 exposing them to Lead and Cadmium. Further, Plaintiff is informed, believes, and  
16 thereon alleges that Defendants are selling Dried Herring I under a brand or trademark  
17 that is owned or licensed by the Defendants or an entity affiliated thereto; have  
18 knowingly introduced Lead and Cadmium into Dried Herring I or knowingly caused  
19 Lead and Cadmium to be created in Dried Herring I; have covered, obscured or altered a  
20 warning label that has been affixed to Dried Herring I by the manufacturer, producer,  
21 packager, importer, supplier or distributor of Dried Herring I; have received a notice and  
22 warning materials for exposure from Dried Herring I without conspicuously posting or  
23 displaying the warning materials; and/or have actual knowledge of potential exposure to  
24 Lead and Cadmium from Dried Herring I. Defendants thereby violated Proposition 65.
- 25 31. The principal routes of exposure are through ingestion, especially direct (oral) ingestion.  
26 Persons sustain exposures by eating and consuming Dried Herring I.
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1 32. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
2 Proposition 65 as to Dried Herring I have been ongoing and continuous, as Defendants  
3 engaged and continue to engage in conduct which violates Health and Safety Code  
4 Section 25249.6, including the manufacture, distribution, promotion, and sale of Dried  
5 Herring I, so that a separate and distinct violation of Proposition 65 occurred each and  
6 every time a person was exposed to Lead and Cadmium by Dried Herring I as mentioned  
7 herein.

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

11 34. Based on the allegations herein, Defendants are liable for civil penalties of up to  
12 \$2,500.00 per day per individual exposure to Lead and Cadmium from Dried Herring I,  
13 pursuant to Health and Safety Code Section 25249.7(b).

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

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17 **SECOND CAUSE OF ACTION**

18 **(By CONSUMER ADVOCACY GROUP, INC. and against PHILIPPINE**  
19 **FOODTRADE, and DOES 11-20 for Violations of Proposition 65, The Safe**  
20 **Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§***  
21 ***25249.5, et seq.*))**

22 **Dried Seafood II**

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

25 37. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
26 distributor, promoter, or retailer of Dried Herring ("Dried Herring II").

27 38. Dried Herring II contains Lead and Cadmium.

28 39. Defendants knew or should have known that the State of California has identified Lead  
as a chemical known to cause cancer, reproductive toxicity, and developmental toxicity

1 and Cadmium as a chemical known to cause reproductive toxicity and developmental  
2 toxicity and therefore was subject to Proposition 65 warning requirements. Defendants  
3 were also informed of the presence of Lead and Cadmium in Dried Herring II within  
4 Plaintiff's notice of alleged violations further discussed above at Paragraph 19b.

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

12 41. Plaintiff is informed, believes, and thereon alleges that between September 3, 2021 and  
13 the present, each of the Defendants knowingly and intentionally exposed California  
14 consumers and users of Dried Herring II, which Defendants manufactured, distributed, or  
15 sold as mentioned above, to Lead and Cadmium, without first providing any type of clear  
16 and reasonable warning of such to the exposed persons before the time of exposure.  
17 Defendants have distributed and sold Dried Herring II in California. Defendants know  
18 and intend that California consumers will use and consume Dried Herring II, thereby  
19 exposing them to Lead and Cadmium. Further, Plaintiff is informed, believes, and  
20 thereon alleges that Defendants are selling Dried Herring II under a brand or trademark  
21 that is owned or licensed by the Defendants or an entity affiliated thereto; have  
22 knowingly introduced Lead and Cadmium into Dried Herring II or knowingly caused  
23 Lead and Cadmium to be created in Dried Herring II; have covered, obscured or altered a  
24 warning label that has been affixed to Dried Herring II by the manufacturer, producer,  
25 packager, importer, supplier or distributor of Dried Herring II; have received a notice  
26 and warning materials for exposure from Dried Herring II without conspicuously posting  
27 or displaying the warning materials; and/or have actual knowledge of potential exposure  
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1 to Lead and Cadmium from Dried Herring II. Defendants thereby violated Proposition  
2 65.

3 42. The principal routes of exposure are through ingestion, especially direct (oral) ingestion.  
4 Persons sustain exposures by eating and consuming Dried Herring II.

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

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

15 45. Based on the allegations herein, Defendants are liable for civil penalties of up to  
16 \$2,500.00 per day per individual exposure to Lead and Cadmium from Dried Herring II,  
17 pursuant to Health and Safety Code Section 25249.7(b).

18 46. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
19 filing this Complaint.

20 **PRAYER FOR RELIEF**

21 Plaintiff demands against each of the Defendants as follows:

- 22 1. A permanent injunction mandating Proposition 65-compliant warnings;  
23 2. Penalties pursuant to Health and Safety Code Section 25249.7, subdivision (b);  
24 3. Costs of suit;  
25 4. Reasonable attorney fees and costs; and  
26 5. Any further relief that the court may deem just and equitable.  
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1 Dated: February 7, 2025

YEROUSHALMI & YEROUSHALMI\*

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