

COPY

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10 the State of California

ENDORSED
FILED
San Francisco County Superior Court

DEC - 9 2004

GORDON PARK-LI, Clerk
BY: ANDREA CARNEY
Deputy Clerk

11 SUPERIOR COURT OF CALIFORNIA
12 COUNTY OF SAN FRANCISCO
13

14 COORDINATION PROCEEDING
15 SPECIAL TITLE [RULE 1550(b)]

16 PROPOSITION 65 FISH CASES

17 In Relation to:

18 PEOPLE OF THE STATE OF CALIFORNIA, ex rel.
19 BILL LOCKYER, Attorney General of the State of
California,

20 Plaintiff,

21 v.

22 SAFEWAY, INC. et al.

23 Defendants.

24 AS YOU SOW et al.,

25 Plaintiffs,

26 v.

27 SAFEWAY, INC., et al.,

28 Defendants.

Judicial Council Coordination
Proceeding No.: 4319

CONSENT JUDGMENT WITH
ANDRONICO'S MARKETS, INC.

Case Nos. CGC 03419292,
BC293749

1 Plaintiffs, the People of the State of California ("People"), private plaintiffs As You
2 Sow and the Sea Turtle Restoration Project (jointly "AYS"), and defendant Andronico's
3 Markets, Inc. (Andronico's) (hereinafter jointly "Parties") enter into this Consent Judgment as
4 follows:

5 1. Introduction

6 1.1 On January 17, 2003 the People filed a complaint in state court for Civil Penalties
7 and Injunctive Relief under Health & Safety Code sections 25249.5 *et seq.* and Business and
8 Professions Code sections 17200 *et seq.* against a number of Defendants. On January 21, 2003
9 the People filed a First Amended Complaint (hereinafter jointly "People's Complaints"). The
10 People served Andronico's as Doe Defendant No. 2 on February 24, 2003.

11 1.2 In February, 2003, AYS filed a complaint in state court for injunctive relief and
12 restitution under Business and Professions Code sections 17200 *et seq.* against a number of
13 Defendants ("AYS Complaint"). AYS served Andronico's as a Doe Defendant on April 23,
14 2003. (The People's Complaints and the AYS Complaint are hereinafter jointly designated as
15 "Complaints.")

16 1.3 On October 23, 2003, this action was coordinated with other actions in this
17 coordination proceeding. On October 27, 2003 the Honorable Richard Kramer was assigned as
18 the coordination trial judge.

19 1.4 The Complaints allege that during the relevant periods of time herein,
20 Andronico's was a company that employed more than ten persons and offered for sale within the
21 State of California some or all of the following fresh or frozen fish to consumers within the state
22 of California: Swordfish, Ahi (Yellowfin) tuna, Albacore tuna, shark (hereinafter "Fish".)

23 1.5 The Complaints allege that Andronico's violated provisions of the Safe Drinking
24 Water and Toxic Enforcement Act of 1986, Health and Safety Code sections 25249.5 *et seq.*
25 ("Proposition 65"), and Business and Professions Code sections 17200 *et seq.* ("Unfair
26 Competition Act"), by knowingly and intentionally exposing persons to mercury, mercury
27 compounds, methyl mercury, and methylmercury compounds (hereinafter "Mercury"), chemicals
28 known to the State of California to cause cancer and/or reproductive toxicity, by the sale of Fish

1 to consumers within the State of California, without first providing a clear and reasonable
2 warning to such individuals. Andronico's denies these allegations.

3 1.6 For purposes of this Consent Judgment only, the Parties stipulate that this Court
4 has jurisdiction over the allegations of violations contained in the Complaints and personal
5 jurisdiction over Andronico's as to the acts alleged in the Complaints, that venue is proper in the
6 City and County of San Francisco, and that this Court has jurisdiction to enter this Consent
7 Judgment.

8 1.7 The Parties enter into this Consent Judgment pursuant to a settlement of certain
9 disputed claims between the Parties as alleged in the Complaints for the purpose of avoiding
10 prolonged and costly litigation between the Parties hereto. By execution of this Consent
11 Judgment, the Parties do not admit any facts or conclusions of law, including, but not limited to,
12 any facts or conclusions of law suggesting or demonstrating any violations of Proposition 65, the
13 Unfair Competition Act, or any other statutory, common law or equitable requirements relating
14 to Fish. Nothing in this Consent Judgment shall be construed as an admission by the Parties of
15 any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the
16 Consent Judgment constitute or be construed as an admission by the Parties, either individually
17 or collectively, of any fact, conclusion of law, issue of law, or violation of law. Nothing in this
18 Consent Judgment shall prejudice, waive or impair any right, remedy, argument or defense the
19 Parties may have in this or any other or future legal proceedings. This Consent Judgment is the
20 product of negotiation and compromise and is accepted by the Parties for purposes of settling,
21 compromising and resolving issues disputed in this action, including future compliance by
22 Andronico's with Section 2 of this Consent Judgment, and compliance by Andronico's with
23 Proposition 65 as to matters alleged in the Complaint, and shall not be used for any other
24 purpose, or in any other matter. However, this paragraph shall not diminish or otherwise affect
25 the obligations, responsibilities, and duties of the parties under this Consent Judgment.

26 2. Injunctive Relief - Warning Program

27 2.1 Clear and reasonable warning that Fish expose persons to Mercury, chemicals
28 known to the State of California to cause cancer and birth defects or other reproductive harm,

1 shall be provided by Andronico's in the manner provided in this Consent Judgment. For
2 purposes of complying with the warning requirements of Proposition 65 as to sales of Fish,
3 Andronico's agrees to provide the warning in the manner indicated in Paragraph 2.2 below.

4 2.2 Within thirty (30) days after the notice of entry of this Consent Judgment by the
5 Court, Andronico's will provide a warning to each of its customers purchasing Fish. The
6 warning shall be in the form set forth in Exhibit A ("Warning Sign"). The Warning Sign shall be
7 printed on 65-pound cover stock, shall be 8-1/2" by 11" in size, and shall have the exact content,
8 form, color, and print style as Exhibit A. The Warning Sign shall be posted in the area where the
9 Fish are sold, in a manner that is reasonably calculated to make the warning message available to
10 the customer prior to purchase of the Fish as set forth below:

11 (1) Where Fish are sold in a grocery counter with an upright glass cover, the Warning
12 Sign shall be affixed at the top of the glass portion of the counter in the middle of the counter, or
13 shall be placed in a holder that stands upright on the counter in the middle of the counter. If the
14 counter extends for more than ten feet from where the sign is posted, another Warning Sign shall
15 be posted in a similar fashion every ten feet from the middle sign.

16 (2) Where Fish are sold in a grocery counter without an upright glass cover, the
17 Warning Sign shall be placed in a holder that stands upright at eye level on the counter in the
18 middle section. If the counter extends for more than ten feet from where the sign is posted,
19 another Warning Sign shall be posted in a similar fashion every ten feet from the middle sign.

20 (3) Where Fish are sold in an upright freezer, the sign shall be attached at eye level to
21 the door of the freezer that is directly in front of the Fish.

22 (4) All Warning Signs must be no more than three feet from the consumer purchasing
23 fish and sufficiently well lighted so that they can be easily read.

24 3. Settlement Payments - Civil Penalties

25 3.1 Within thirty (30) days after the notice of entry of this Consent Judgment, as full,
26 final and complete satisfaction of all claims for civil penalties or restitution for the alleged
27 violations of Proposition 65 as regards Mercury in Fish, up to and including the date of entry of
28 this Consent Judgment, Andronico's shall pay the sum of five thousand and fifty seven dollars

1 and fifty cents (\$5,057.50) by mailing a check, payable to the "Office of the Attorney General of
2 the State of California" (Attn: Susan S. Fiering, Deputy Attorney General), 1515 Clay Street, 20th
3 Floor, P.O. Box 70550, Oakland, CA 94612 . Payment of the preceding amount shall be made as
4 a civil penalty pursuant to Health & Safety Code Section 25249.7(b) and 25249.11(c). Making
5 this payment shall not be construed as an admission by Andronico's of any fact, conclusion of
6 law, or violation of law, nor shall compliance with the Consent Judgment constitute or be
7 construed as an admission by Andronico's of any fact, conclusion of law, or violation of law.

8 4. Settlement Payments - Payment of Costs and Fees

9 4.1 Within thirty (30) days after the notice of entry of this Consent Judgment,
10 Andronico's shall pay the amount of ten thousand dollars (\$10,000) as reimbursement of As
11 You Sow's and the Sea Turtle Restoration Project's costs of investigating and bringing the action
12 *As You Sow, et al. v. Safeway, Inc., et al.*, No. CBC-03-417139, by mailing a check, payable to
13 Mark S. Pollack, Esq., As You Sow, and the Sea Turtle Restoration Project, in care of Law
14 Offices of Mark S. Pollock, Esq., 1766 Third Street, Napa, CA 94559.

15 5. Settlement Payments - Education and Monitoring Program

16 5.1 Within thirty (30) days after the notice of entry of this Consent Judgment,
17 Andronico's shall pay the amount of five thousand and fifty seven dollars and fifty cents
18 (\$5,057.50) to the Public Health Trust ("Trust"), a program of the Public Health Institute, to be
19 used to fund programs to educate consumers concerning Mercury in fish and seafood and to be
20 used to monitor compliance with the injunctive relief portions of the Consent Judgment
21 concerning posting of the Warning Sign. Payment shall be made by delivery of certified funds
22 payable to the Public Health Trust, 180 Grand Ave., Suite 750, Oakland, CA 94612 with a copy
23 to the Office of the Attorney General of the State of California at 1515 Clay Street, 20th Floor,
24 P.O. Box 70550 Oakland, CA 94612 (Attn: Susan S. Fiering, Deputy Attorney General).

25 5.2 Any process undertaken by the Public Health Trust to identify and choose
26 the entity that will conduct the education program or the program to monitor compliance with the
27 Warning Sign program must be open to public scrutiny and subject to public notice and
28 comment. Any proposed use of the funds must be approved by the Attorney General.

1 6. Stipulated Penalties

2 6.1 In the event that any Andronico's store fails to post the required Warning
3 Sign as set forth in section 2 above, Andronico's shall be liable for stipulated penalties as
4 follows:

- 5 First Violation at a facility: \$500
- 6 Second Violation at same facility: \$1500
- 7 Third and Subsequent Violations at
8 the same facility: \$2500

9 6.2 Except as provided in paragraph 6.4 below, within ten (10) days of receipt
10 of written notice from the People that the Warning Sign is not properly posted, Andronico's shall
11 pay the appropriate sum set forth in paragraph 6.1 above as a penalty amount. The payment shall
12 be made to the "Office of the Attorney General of the State of California" (Attn: Susan S.
13 Fiering, Deputy Attorney General), 1515 Clay Street, 20th Floor, P.O. Box 70550, Oakland, CA
14 94612 . Payment of the preceding amount shall be made as a civil penalty pursuant to Health &
15 Safety Code Section 25249.7(b) and 25249.11(c). The written notice shall identify the facility in
16 which the Warning Sign was not properly posted. Andronico's designates the following
17 individuals to receive the written notice specified above:

18 Jim Johnson
19 Risk Manager
20 Andronico's Markets, Inc.
21 1109 Washington Ave.
22 Albany, CA 94706
23 Fax: (510) 649-6107
24 jjohnson@andronicos.com

25 6.3 Except as provided in paragraph 6.4 below, within ten (10) days after
26 receiving written notice that the Warning Sign was not properly posted, Andronico's shall post
27 the required Warning Sign and shall provide to the People a declaration under penalty of perjury
28 stating when the Warning Sign was posted.

29 6.4 If, after receiving the written notice specified in paragraph 6.2 above,
30 Andronico's maintains that the Warning Sign was properly posted, Andronico's may challenge
31 the stipulated penalties by filing a motion with this Court to be relieved of any stipulated

1 penalties. The only basis for challenging stipulated penalties shall be that the Warning Sign was
2 properly posted. The motion must be filed within thirty (30) days of receipt of the written notice.
3 The Court shall receive whatever evidence is necessary and shall conduct a hearing as necessary
4 to determine whether or not the Warning Sign was properly posted.

5 6.5 Notwithstanding paragraph 6.1 above, in the event that Andronico's has
6 been cited with three Violations at a single facility, the People may seek to enforce this Consent
7 Judgment through any civil enforcement proceedings available by law for the fourth or
8 subsequent Violation.

9 7. Additional Enforcement Actions; Continuing Obligations

10 7.1. By entering into this Consent Judgment, the People do not waive any right
11 to take further enforcement actions on any violations not covered by the Complaints or this
12 Consent Judgment, and Andronico's does not waive any rights or defenses, as to any violations
13 not covered by the Complaints or this Consent Judgment. Nothing in this Consent Judgment
14 shall be construed as diminishing Andronico's's continuing obligation to comply with
15 Proposition 65 or the Unfair Competition Act in its future activities.

16 8. Enforcement of Consent Judgment

17 8.1. The Attorney General may, by motion or order to show cause before the
18 Superior Court of San Francisco, enforce the terms and conditions contained in this Consent
19 Judgment. In any action brought by the People to enforce this Consent Judgment, the People
20 may seek whatever fines, costs, attorneys fees, penalties or remedies are provided by law for
21 failure to comply with the Consent Judgment, provided, however, that, the People are limited to
22 stipulated penalties pursuant to section 6 above for the first three Violations at any single facility.
23 Where said failure to comply constitutes a fourth or subsequent Violation at a single facility, or
24 constitutes a violation of Proposition 65 or other laws not covered by this Consent Judgment, the
25 People are not limited to enforcement of this Consent Judgment, but may seek in another action,
26 whatever fines, costs, attorneys fees, penalties or remedies are provided by law for failure to
27 comply with Proposition 65 or other such laws. However, the rights of Andronico's to defend
28 itself and its actions in law or equity shall not be abrogated or reduced in any fashion by the

1 terms of this Paragraph and Andronico's shall be entitled to raise any and all applicable defenses
2 and/or counterclaims, arising in law or equity, against the People and seek such costs, damages,
3 and attorneys fees as may apply. This paragraph shall not diminish or otherwise affect the
4 obligations, responsibilities, and duties of the Parties under this Consent Judgment.

5 9. Application of Consent Judgment

6 9.1 The Consent Judgment shall apply to, be binding upon and inure to the
7 benefit of, the Parties, their parents, divisions, subdivisions, subsidiaries, and affiliates and the
8 predecessors, successors or assigns of each of them.

9 10. Claims Covered

10 10.1 Except as provided below, this Consent Judgment is a full and fair
11 adjudication of all claims and a final and binding resolution between the People, AYS, and
12 Andronico's of any and all alleged violations of Proposition 65, and the Unfair Practices Act,
13 Business and Professions Code Sections 17200 et seq., or any other statutory or common law
14 claim that could have been asserted in the Complaints against Andronico's up through the date of
15 entry of this agreement arising from failure to provide clear and reasonable warnings pursuant to
16 Proposition 65 of exposure to Mercury from consumption of Fish.

17 10.2 Hereinafter, compliance by Andronico's with this Consent Judgment
18 constitutes compliance with Proposition 65 as to consumer exposures to Mercury resulting from
19 the sale of Fish to consumers within the State of California by any of Andronico's stores.
20 Furthermore, the posting of the Warning Sign in compliance with this agreement, in the area
21 where other fish or seafood are sold, constitutes compliance with Proposition 65 as to consumer
22 exposures to Mercury resulting from the sale of those other fish or seafood as well.

23 11. Confidentiality of Data

24 11.1 For settlement purposes only, Andronico's submitted to the Attorney
25 General Fish proprietary and trade secret sales data with the express understanding that such data
26 would be held confidentially by the Attorney General for settlement purposes in this case only
27 and would not be released to any other persons or entities outside of the office of the Attorney
28 General, including other Defendants. The People and the Attorney General shall not disclose any

1 such Fish sales data to any other persons or entities outside of the Office of the Attorney General,
2 including other Defendants, unless otherwise ordered by a court of competent jurisdiction. If the
3 Attorney General is served with a request to disclose Andronico's's Fish sales data, it shall
4 provide notice to Andronico's within fifteen days (15) after receiving such request to disclose. In
5 addition, said Fish sales data is privileged and confidential pursuant to Rule 408 of the Federal
6 Rules of Evidence and California Evidence Code sections 1040 and 1152.

7 12. Entire Agreement

8 12.1 This Consent Judgment contains the sole and entire agreement and
9 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
10 discussions, negotiations, commitments and understandings related hereto. No representations,
11 oral or otherwise, express or implied, other than those contained herein have been made by any
12 party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
13 deemed to exist or to bind any of the parties.

14 13. Authority to Stipulate to Consent Judgment

15 13.1 Each signatory to this Consent Judgment certifies that he or she is fully
16 authorized by the party he or she represents to enter into this Consent Judgment on behalf of the
17 party represented and legally to bind that party.

18 14. Modification

19 14.1 This Consent Judgment may be modified from time to time by express
20 written agreement of the Parties, with the approval of the Court, or by an order of this Court in
21 accordance with law. Grounds for considering modification shall include any that are permitted
22 by law, including, but not limited to, the grounds set forth below.

23 14.2 If the Attorney General subsequently agrees in a settlement or judicially
24 entered injunction or consent judgment that Fish do not require a warning under Proposition 65,
25 or that a modified warning for Fish is appropriate that differs from that imposed in this Consent
26 Judgment; or a court of competent jurisdiction renders a final judgment in a case brought by the
27 Attorney General that eliminates the warning requirement for Fish or that modifies the warning
28 requirement for Fish that differs from that imposed under this Consent Judgment, then

1 Andronico's shall be entitled to seek to modify this Consent Judgment to eliminate or modify the
2 warning set forth in section 2, consistent with the Attorney General agreement or with the court
3 judgment as described herein.

4 14.3 Andronico's shall provide written notice to the People that it intends to seek
5 modification to the Consent Judgment to eliminate or modify the warning pursuant to the
6 provisions of paragraph 14.1 above. If the People agree that such modification or elimination of
7 the warning is justified pursuant to the provisions of section 14.1 above, the parties shall jointly
8 move the Court to modify the Consent Judgment to eliminate or modify the warning requirement.

9 14.4 If the People do not agree that the elimination or modification of the
10 warning requirement of this Consent Judgment is justified pursuant to the provisions of section
11 14.1 above, Andronico's may file a motion with the Court, seeking to eliminate or modify the
12 warning requirement based on the provisions of section 14.1 above. The People may oppose any
13 such motion. In any motion by Andronico's under this section, the burden of proving that the
14 warning should be eliminated or modified based on the provisions of section 14.1 above, remains
15 on Andronico's.

16 14.5 Nothing in this section shall apply to sections 3, 4, and 5 of this Consent
17 Judgment.

18 15. Execution in Counterparts

19 15.1 This Consent Judgment may be executed in counterparts, which taken
20 together shall be deemed to constitute one and the same document.

21 16. Entry of Stipulation for Entry of Consent Judgment Required

22 16.1 This Stipulation for Entry of Consent Judgment shall be null and void, and
23 be without any force or effect, unless entered by the Court in this matter. If the Consent
24 Judgment is not entered by the Court, the execution of this Consent Judgment by Andronico's or
25 the People shall not be construed as an admission by Andronico's or the People of any fact, issue
26 of law or violation of law.

27 17. Retention of Jurisdiction

28 17.1 This Court shall retain jurisdiction of this matter to implement the Consent

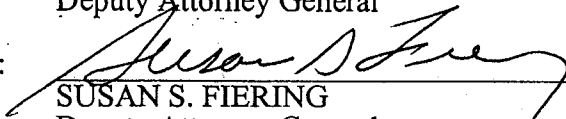
1 Judgment.

2 IT IS SO STIPULATED:

3 Dated: 11/9/04

BILL LOCKYER
Attorney General of the State of California
TOM GREENE
Chief Assistant Attorney General
THEODORA BERGER
Senior Assistant Attorney General
EDWARD G. WEIL
Supervising Deputy Attorney General
SUSAN S. FIERING
Deputy Attorney General

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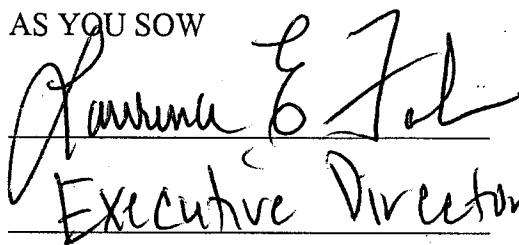


SUSAN S. FIERING
Deputy Attorney General
Attorneys for the Plaintiff People of the
State of California, ex rel. Bill Lockyer,
Attorney General of the State of California

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12 Dated: 11/4/04

AS YOU SOW

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14 By:



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16 Its:

Executive Director

17 Dated: 11/8/04

SEA TURTLE RESTORATION PROJECT

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19 By:



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21 Its:

Executive Director

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23 Dated: _____

ANDRONICO'S MARKETS, INC.

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25 By: _____

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27 Its: _____

28 APPROVED AS TO FORM:

1 Judgment.

2 IT IS SO STIPULATED:

3 Dated: _____

BILL LOCKYER
Attorney General of the State of California
TOM GREENE
Chief Assistant Attorney General
THEODORA BERGER
Senior Assistant Attorney General
EDWARD G. WEIL
Supervising Deputy Attorney General
SUSAN S. FIERING
Deputy Attorney General

By: _____
SUSAN S. FIERING
Deputy Attorney General
Attorneys for the Plaintiff People of the
State of California, ex rel. Bill Lockyer,
Attorney General of the State of California

12 Dated: _____

AS YOU SOW

By: _____

Its: _____

17 Dated: _____

SEA TURTLE RESTORATION PROJECT

By: _____

Its: _____

23 Dated: 10/21/04

ANDRONICO'S MARKETS, INC.

By: *Mattie Lynch*

Its: Chief Financial Officer


27 APPROVED AS TO FORM:

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Dated: 10/21/04

FOLEY, MCINTOSH, FREY & CLAYTOR

By: 
KENNETH W. PRITIKIN, Esq.
Attorneys for Andronico's Markets, Inc.

Dated: _____

LAW OFFICES OF MARK POLLOCK

By: _____
MARK POLLOCK, Esq.
Attorneys for As You Sow and Sea Turtle
Restoration Project

IT IS SO ORDERED:

RICHARD A. KRAMER

Dated: 12/9/04

JUDGE, SUPERIOR COURT OF THE COUNTY
OF SAN FRANCISCO

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Dated: _____

FOLEY, MCINTOSH, FREY & CLAYTOR

By: _____
KENNETH W. PRITIKIN, Esq.
Attorneys for Andronico's Markets, Inc.

Dated: _____

LAW OFFICES OF MARK POLLOCK

By:  _____
MARK POLLOCK, Esq.
Attorneys for As You Sow and Sea Turtle
Restoration Project

IT IS SO ORDERED:

Dated: _____

JUDGE, SUPERIOR COURT OF THE COUNTY
OF SAN FRANCISCO

EXHIBIT A



WARNING!

Nearly all fish and shellfish contain some amount of mercury and related compounds, chemicals known to the State of California to cause cancer, and birth defects or other reproductive harm. Certain fish contain higher levels than others.

Pregnant and nursing women, women who may become pregnant, and young children should not eat the following fish:

SWORDFISH • SHARK • KING MACKEREL • TILEFISH

They should also limit their consumption of other fish, including tuna.

Fish and shellfish are an important part of a healthy diet and a source of essential nutrients. However, the federal Food and Drug Administration (“FDA”) and U.S. Environmental Protection Agency (“EPA”) advise pregnant and nursing women, women who may become pregnant, and children to limit their weekly consumption of fish and to eat fish that are lower in mercury.

The California Department of Health Services recommends that these individuals:

- Eat a variety of different types of fish;
- Eat smaller fish rather than older, larger fish;
- Begin following these guidelines one year before becoming pregnant.

According to the FDA and EPA, fish or shellfish that tend to be lower in mercury include pollock, shrimp, and scallops. Mercury levels in tuna vary. Tuna steaks and canned albacore tuna have higher levels of mercury than canned light tuna.

For more information about the risks of mercury in fish and about the levels in various types of fish consult the following websites:

U.S. Food and Drug Administration (“FDA”)

www.cfsan.fda.gov

U.S. Environmental Protection Agency

www.epa.gov/ost/fish

or call the FDA toll-free at **1-888-SAFEFOOD (1-888-723-3366)**.