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FILED

MAR 19 2015

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
Deputy

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

10 **COUNTY OF MARIN**

11 **BY FAX**

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

14 Plaintiff,

15 v.

16 YAMAMOTO OF ORIENT, INC., a
17 California Corporation; JFC
INTERNATIONAL INC., a California
18 Corporation; GREEN FARM MARKET, a
19 business entity form unknown; and DOES 1-
20 20;

21 Defendants.

CASE NO. **15 0 1 0 4 6**

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)

22 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
23 Defendants YAMAMOTOYAMA OF ORIENT, INC., JFC INTERNATIONAL, INC., GREEN
24 FARM MARKET and DOES 1-20 as follows:

25 **THE PARTIES**

- 26 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an
27 organization qualified to do business in the State of California. CAG is a person within
28 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting

1 as a private attorney general, brings this action in the public interest as defined under
2 Health and Safety Code section 25249.7, subdivision (d).

3 2. Defendant YAMAMOTOYAMA OF ORIENT (“YAMAMOTOYAMA”) is a California
4 Corporation doing business in the State of California at all relevant times herein.

5 3. Defendant JFC INTERNATIONAL, INC. (“JFC”) is a California Corporation doing
6 business in the State of California at all relevant times herein.

7 4. Defendant GREEN FARM MARKET (“GREEN”) is a business entity form unknown
8 doing business in the State of California at all relevant times herein.

9 5. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20,
10 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
11 complaint to allege their true names and capacities when ascertained. Plaintiff is
12 informed, believes, and thereon alleges that each fictitiously named defendant is
13 responsible in some manner for the occurrences herein alleged and the damages caused
14 thereby.

15 6. At all times mentioned herein, the term “Defendants” includes YAMAMOTOYAMA,
16 JFC, GREEN and DOES 1-20.

17 7. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
18 times mentioned herein have conducted business within the State of California.

19 8. Upon information and belief, at all times relevant to this action, each of the Defendants,
20 including DOES 1-20, was an agent, servant, or employee of each of the other
21 Defendants. In conducting the activities alleged in this Complaint, each of the
22 Defendants was acting within the course and scope of this agency, service, or
23 employment, and was acting with the consent, permission, and authorization of each of
24 the other Defendants. All actions of each of the Defendants alleged in this Complaint
25 were ratified and approved by every other Defendant or their officers or managing agents.
26 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged
27 wrongful conduct of each of the other Defendants.

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

5 **JURISDICTION**

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

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

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

23 **BACKGROUND AND PRELIMINARY FACTS**

24 13. In 1986, California voters approved an initiative to address growing concerns about
25 exposure to toxic chemicals and declared their right "[t]o be informed about exposures to
26 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,
27 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
28 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections

1 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources
2 from contamination, to allow consumers to make informed choices about the products
3 they buy, and to enable persons to protect themselves from toxic chemicals as they see
4 fit.

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

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

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

22 17. Plaintiff identified certain practices of manufacturers and distributors of Lead-bearing
23 products of exposing, knowingly and intentionally, persons in California to the
24 Proposition 65-listed chemicals of such products without first providing clear and
25 reasonable warnings of such to the exposed persons prior to the time of exposure.
26 Plaintiff later discerned that Defendants engaged in such practice.

27 18. On February 27, 1987, the Governor of California added Lead to the list of chemicals
28 known to the State to cause reproductive toxicity (*Cal. Code Regs.* tit. 27, § 27001(c)).

1 Lead is known to the State to cause developmental, female, and male reproductive
2 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)
3 months after addition of Lead to the list of chemicals known to the State to cause
4 reproductive toxicity, Lead became fully subject to Proposition 65 warning requirements
5 and discharge prohibitions.

6 19. On October 1, 1992, the Governor of California added Lead and Lead compounds to the
7 list of chemicals known to the State to cause cancer (*Cal. Code Regs. tit. 27, § 27001(b)*).
8 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months
9 after addition of Lead and lead compounds to the list of chemicals known to the State to
10 cause cancer, Lead and lead compounds became fully subject to Proposition 65 warning
11 requirements and discharge prohibitions.

12 **SATISFACTION OF PRIOR NOTICE**

13 20. On or about September 16, 2014, Plaintiff gave notice of alleged violations of Health and
14 Safety Code section 25249.6, concerning consumer products exposures, subject to a
15 private action to YAMAMOTOYAMA, JFC, GREEN and to the California Attorney
16 General, County District Attorneys, and City Attorneys for each city containing a
17 population of at least 750,000 people in whose jurisdictions the violations allegedly
18 occurred, concerning the product Roasted Seaweed containing Lead.

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

22 22. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
23 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
24 Plaintiff who executed the certificate had consulted with at least one person with relevant
25 and appropriate expertise who reviewed data regarding the exposures to Lead the subject
26 Proposition 65-listed chemicals of this action. Based on that information, the attorney for
27 Plaintiff who executed the Certificate of Merit believed there was a reasonable and
28 meritorious case for this private action. The attorney for Plaintiff attached to the

1 Certificate of Merit served on the Attorney General the confidential factual information
2 sufficient to establish the basis of the Certificate of Merit.

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

6 24. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
7 gave notices of the alleged violation to YAMAMOTOYAMA, JFC, GREEN and the
8 public prosecutors referenced in Paragraph 20.

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

12 **FIRST CAUSE OF ACTION**

13 **(By CONSUMER ADVOCACY GROUP, INC. and against YAMAMOTOYAMA, JFC,
14 GREEN and DOES 1-20 for Violations of Proposition 65, The Safe Drinking Water and
15 Toxic Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

16 **Roasted Seaweed**

17 26. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
18 reference paragraphs 1 through 25 of this complaint as though fully set forth herein. Each
19 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,
20 promoter, or retailer of Roasted Seaweed, which includes but is not limited to,
21 "YAMAMOTOYAMA ROASTED SEAWEED; NET WT. 0.88 oz (25 g); 10 SHEETS;
22 DISTRIBUTED BY JFC INTERNATIONAL INC, LOS ANGELES, CA 90040;
23 PACKED BY YAMAMOTOYAMA® of America, Pomona, CA 91768; Barcode: 0
24 11152 01358 9" ("SEAWEED").

25 27. SEAWEED contains Lead.

26 28. Defendants knew or should have known that Lead has been identified by the State of
27 California as a chemical known to cause cancer and reproductive toxicity and therefore
28 was subject to Proposition 65 warning requirements. Defendants were also informed of

1 the presence of Lead in SEAWEED within Plaintiff's notice of alleged violations further
2 discussed above at Paragraph 20.

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

9 30. Plaintiff is informed, believes, and thereon alleges that between September 16, 2011 and
10 the present, each of the Defendants knowingly and intentionally exposed their California
11 consumers and users of SEAWEED, which Defendants manufactured, distributed, or sold
12 as mentioned above, to Lead, without first providing any type of clear and reasonable
13 warning of such to the exposed persons before the time of exposure. Defendants have
14 distributed and sold SEAWEED in California. Defendants know and intend that
15 California consumers will use SEAWEED, thereby exposing them to Lead. Defendants
16 thereby violated Proposition 65.

17 31. The principal routes of exposure are through dermal contact, ingestion and inhalation.
18 Persons sustain exposures by handling SEAWEED without wearing gloves or any other
19 personal protective equipment, or by touching bare skin or mucous membranes with
20 gloves after handling SEAWEED, as well as through direct and indirect hand to mouth
21 contact, hand to mucous membrane, or breathing in particulate matter dispersed from
22 SEAWEED.

23 32. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
24 Proposition 65 as to SEAWEED have been ongoing and continuous to the date of the
25 signing of this complaint, as Defendants engaged and continue to engage in conduct
26 which violates Health and Safety Code section 25249.6, including the manufacture,
27 distribution, promotion, and sale of SEAWEED, so that a separate and distinct violation
28

1 of Proposition 65 occurred each and every time a person was exposed to Lead by
2 SEAWEED as mentioned herein.

3 33. 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 34. Based on the allegations herein, Defendants are liable for civil penalties of up to
7 \$2,500.00 per day per individual exposure to Lead from SEAWEED, pursuant to Health
8 and Safety Code section 25249.7(b).

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

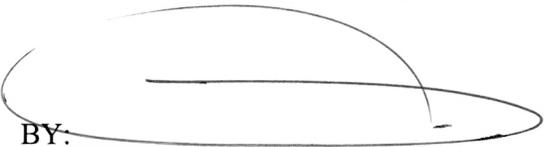
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12 **PRAYER FOR RELIEF**

13 Plaintiff demands against each of the Defendants as follows:

- 14 1. A permanent injunction mandating Proposition 65-compliant warnings;
15 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
16 3. Costs of suit;
17 4. Reasonable attorney fees and costs; and
18 5. Any further relief that the court may deem just and equitable.

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20
21 Dated: March 19, 2015

YEROUSHALMI & YEROUSHLAMI

22
23 BY: 

24 Reuben Yeroushalmi
25 Attorneys for Plaintiff,
26 Consumer Advocacy Group, Inc.
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