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ENDORSED
FILED
ALAMEDA COUNTY

SEP 17 2015

CLERK OF THE SUPERIOR COURT
By MARGARET J. DOWN
Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA

12 AS YOU SOW,

13 Plaintiff,

14 vs.

15 ICREST INTERNATIONAL LLC, and DOES
16 1-10,

17 Defendants.

Case No.:

RG15786176

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

Civil Case

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INTRODUCTION

1. California's Safe Drinking Water and Toxic Enforcement Act ("Proposition 65" or "the Act"), Health & Safety Code §25249.5 *et seq.*, prohibits any person in the course of doing business from knowingly and intentionally exposing any individual to a chemical known to the State of California to cause cancer or reproductive toxicity, without first giving clear and reasonable warning of such exposure. Health & Safety Code §25249.6. This prohibition applies with equal force against business entities that produce, distribute, or sell consumer products, where the reasonable intended use of such products would result in an exposure to a known carcinogen or reproductive toxin.

2. On October 1, 1987, the State of California officially listed cadmium as a chemical known to the State to cause cancer; and, on May 1, 1997, listed it as a chemical known to the State to cause reproductive toxicity.

3. On information and belief, Defendant Icrest International, Inc. (hereinafter, "Icrest" or "Defendant") produces, distributes, and/or sells Yatta! Brand Roasted Seaweed Sushi Nori Half Sheet (the "Covered Product"), in California.

4. Cadmium is present in the Covered Product. Consumers are exposed to this chemical when they use the Covered Product. The primary route of exposure is ingestion.

5. Icrest has failed to provide a clear and reasonable warning that ingestion of the Covered Product will result in exposure to cadmium, a chemical known to the State of California to cause cancer and reproductive toxicity. Accordingly, Plaintiff As You Sow seeks an order requiring that Icrest either discontinue any production, distribution, and/or sale of the Covered Product; take measures to ensure that consumers do not use the Covered Product in a manner that will expose them to cadmium; or provide a clear and reasonable warning that ingestion of the Covered Product will result in exposure to a chemical known to the State of California to cause cancer and reproductive toxicity, and/or civil penalties as provided for under the Act.

1 **PARTIES**

2 6. Plaintiff As You Sow (“Plaintiff”) is an Oakland-based non-profit corporation
3 dedicated to, among other causes, the protection of the environment, toxics reduction, the
4 promotion of and improvement of human health, the improvement of worker and consumer
5 rights, environmental education, and corporate accountability. As You Sow brings this action on
6 its own behalf pursuant to Health and Safety Code §25249.7(d).

7 7. Defendant Icrest is a business entity with ten or more employees that has
8 produced, distributed, and/or sold in California a product called Yatta! Brand Roasted Sushi Nori
9 Half Sheet, which contains cadmium.

10 **JURISDICTION AND VENUE**

11 8. This Court has jurisdiction over this action pursuant to Article VI, §10 of the
12 California Constitution because this case is not a cause given by statute to other courts.

13 9. This Court has jurisdiction over the Defendant named above because it is a
14 business entity that conducts sufficient business, has sufficient minimum contacts in, or
15 otherwise intentionally avails itself of the market in California through the manufacture, sale,
16 distribution, and/or use of its products in California.

17 10. Venue is proper in this Court because the obligation or liability arises, at least in
18 part, in the County of Alameda.

19 **STATUTORY BACKGROUND**

20 11. In 1986, the voters of California overwhelmingly enacted Proposition 65.

21 12. Among other requirements, Proposition 65 provides that “[n]o person in the
22 course of doing business shall knowingly and intentionally expose any individual to a chemical
23 known to the state to cause cancer or reproductive toxicity without first giving clear and
24 reasonable warning to such individual, except as provided in Section 25249.10.” Health &
25 Safety Code §25249.6.

26 13. Proposition 65 establishes a procedure by which the state is to develop a list of
27 chemicals “known to the State to cause cancer or reproductive toxicity.” Health & Safety Code
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1 §25249.8. No warning is required for a chemical until one year after the state lists the chemical.
2 Health & Safety Code §25249.10(b).

3 14. “Whenever a clear and reasonable warning is required under Section 25249.6 of
4 the Act, the method employed to transmit the warning must be reasonably calculated,
5 considering the alternative methods available under the circumstances, to make the warning
6 message available to the individual prior to exposure.” Code Regs., tit. 27, §25601.

7 15. An exposure to a chemical in a consumer product is one that “results from a
8 person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a
9 consumer good, or any exposure that results from receiving a consumer service.” Code Regs.,
10 tit. 27, §25602(b).

11 16. An exposure is knowing if the person or entity responsible for the exposure had or
12 has “knowledge of the fact that . . . exposure to a chemical listed pursuant to Section 24249.8(a)
13 of the Act is occurring.” Code Regs., tit. 27, §25102(n).

14 17. Pursuant to Health & Safety Code §25249.7, this Court has authority to enjoin
15 “[a]ny person that violates or threatens to violate [§25249.6]” and to impose civil penalties “not
16 to exceed two thousand five hundred dollars (\$2,500) per day for each violation in addition to
17 any other penalty established by law.”

18 18. Private parties are entitled to bring an action to enforce the Act under Health &
19 Safety Code §25249.7(d).

20 **FACTS**

21 19. On October 1, 1987, “cadmium and cadmium compounds” were placed on the
22 Office of Environmental Health Hazard Assessment’s (“OEHHA”) list of chemicals known to
23 cause cancer. On May 1, 1997, cadmium was placed on the list of chemicals known to cause
24 reproductive toxicity. Code Regs. tit. 27, §27001(b)-(c).

25 20. Defendant has produced, distributed, and/or sold the Covered Product within the
26 State of California without providing a clear and reasonable warning that the intended and
27 reasonably foreseeable use of the product will result in exposure to a chemical known to the
28 State of California to cause cancer and reproductive toxicity (“Proposition 65 warning”).

1 21. On information and belief, Defendant has produced, distributed, and/or sold the
2 Covered Product within the State of California, without providing an adequate and reasonable
3 warning as required by Proposition 65 since at least November 4, 2013.

4 22. Defendant has had knowledge that the Covered Product it produces, distributes,
5 and/or sells contains cadmium.

6 23. The primary route of exposure to cadmium from Defendant's product is ingestion.
7 This exposure to hazardous cadmium results from the reasonably foreseeable use of the Covered
8 Product.

9 24. On November 4, 2014, Plaintiff served Defendant with a written notice of
10 violation stating that Defendant had violated Proposition 65 by exposing individuals to cadmium
11 in the Covered Product without providing a clear and reasonable warning.

12 25. Also on November 4, 2014, Plaintiff provided notice of the violation to the
13 Attorney General and the district attorneys and city attorneys in whose jurisdiction the violations
14 are alleged to have occurred.

15 26. Defendant has knowingly and intentionally exposed consumers to cadmium. The
16 exposure has been knowing and intentional in part because it results from Defendant's
17 production, distribution and/or sale of the Covered Product that contains cadmium, with
18 knowledge that reasonably foreseeable use of the product will result in consumers' exposure to a
19 chemical, namely cadmium, known to the State of California to cause cancer and reproductive
20 toxicity.

21 27. In accordance with Health & Safety Code §25249.7(d), this action is being
22 commenced more than 60 days from the date that As You Sow provided notice of the violation
23 of Health & Safety Code §25249.6 alleged herein to the Attorney General and the district
24 attorneys and city attorneys in whose jurisdiction the violations are alleged to have occurred, and
25 to Defendant. The notice provided to Defendant included a certificate of merit that complied
26 with the requirements of Health & Safety Code §25249.7(d)(1). Factual information sufficient to
27 establish the basis of the certificate of merit was attached to the certificate of merit served on the
28 Attorney General.

1 Dated: September 16, 2015

Respectfully submitted,

2 BARBARA J. CHISHOLM
3 TONY LOPRESTI
4 Altshuler Berzon LLP

5 By: 

Tony LoPresti

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