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**ENDORSED  
FILED  
ALAMEDA COUNTY**

SEP 13 2016

CLERK OF THE SUPERIOR COURT  
By Xian Xii Bowie

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF ALAMEDA

RG 16830857

11 AS YOU SOW,

12 Plaintiff,

13 v.

14 MISHIMA FOODS U.S.A. INC.,

15 Defendant.

Case No.: \_\_\_\_\_

**COMPLAINT**

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1 INTRODUCTION

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

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

13 3. On February 27, 1987, the State of California officially listed lead as a chemical  
14 known to the State to cause reproductive toxicity; and, on October 1, 1992, listed it as a chemical  
15 known to the State to cause cancer.

16 4. On information and belief, Defendant Mishima Foods U.S.A. Inc. (hereinafter  
17 "Mishima" or "Defendant"), produced, distributed, and/or sold Seaweed Roll Soft & Crunchy  
18 Brown Rice Cracker (the "Covered Product"), in California.

19 5. Cadmium and lead are present in the Covered Product. Consumers are exposed to  
20 these chemicals when they ingest the Covered Product.

21 6. Defendant has failed to provide a clear and reasonable warning that ingestion of  
22 the Covered Product will result in exposure to cadmium and lead, chemicals known to the State  
23 of California to cause cancer and reproductive toxicity. Accordingly, Plaintiff As You Sow  
24 seeks an order requiring that Defendant take measures to ensure that California consumers  
25 ingesting the Covered Product are not exposed to cadmium or lead, or provide a clear and  
26 reasonable warning that ingestion of the Covered Product will result in exposure to chemicals  
27 known to the State of California to cause cancer and reproductive toxicity.

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1 **PARTIES**

2 7. 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 and in the public interest pursuant to Health and Safety Code §25249.7(d).

7 8. On information and belief, Defendant MISHIMA FOODS U.S.A. INC. is a  
8 business entity that has produced, distributed, and/or sold in California a product called Seaweed  
9 Roll Soft & Crunchy Brown Rice Cracker, which contains cadmium and lead.

10 **JURISDICTION AND VENUE**

11 9. 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 10. This Court has jurisdiction over Defendant because it is a business entity that  
14 conducts sufficient business, has sufficient minimum contacts in, or otherwise intentionally  
15 avails itself of the market in California through the manufacture, sale, distribution, and/or use of  
16 products in California.

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

19 **LEGAL BACKGROUND**

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

21 13. 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 14. 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 15. “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. The  
7 warning that is provided “must clearly communicate that the chemical in question is known to  
8 the State to cause cancer, or birth defects or other reproductive harm.” *Id.* The warning may not  
9 include or be accompanied by “additional words or phrases that contradict or obfuscate  
10 otherwise acceptable warning language.” Code Regs., tit. 11 §3202(b).

11 16. The warning must be provided “to any person to whom the product is sold or  
12 transferred unless the product is packaged or labeled with a clear and reasonable warning.” Code  
13 Regs., tit. 27, §25603(c).

14 17. According to the applicable regulations, a clear and reasonable warning may be  
15 provided through warnings on a product, or through shelf warnings or signs, but such warnings  
16 must be “prominently placed . . . with such conspicuousness, as compared with other words,  
17 statements, designs, or devices in the label, labeling or display as to render it likely to be read  
18 and understood by an ordinary individual under customary conditions of purchase or use.” Code  
19 Regs., tit. 27, §25603.1(a)-(d); *see also Dowhal v. SmithKline Beecham Consumer Healthcare*  
20 (2004) 32 Cal.4th 910, 918 (“The warning may be communicated through product labeling,  
21 point-of-sale signs, or public advertising.”).

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

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



1           28.    On information and belief, Defendant 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 beginning on November 4, 2013.

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

7           30.    Also on November 4, 2014, Plaintiff provided written notice of the violation to  
8 the Attorney General and the district attorneys and city attorneys in whose jurisdiction the  
9 violations are alleged to have occurred.

10          31.    Defendant has knowingly and intentionally exposed consumers to cadmium and  
11 lead. The exposure has been knowing and intentional in part because it results from Defendant's  
12 production, distribution and/or sale of the Covered Product that contains cadmium and lead, with  
13 knowledge that reasonably foreseeable use of the product will result in consumers' exposure to  
14 chemicals, namely cadmium and lead, known to the State of California to cause cancer and  
15 reproductive toxicity.

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

24          33.    Neither the Attorney General, any district attorney, any city attorney, nor any  
25 other public prosecutor has commenced and is diligently prosecuting an action to address the  
26 violations alleged herein.

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1 **FIRST CAUSE OF ACTION**

2 34. Plaintiffs re-allege, as if fully set forth herein, each and every allegation contained  
3 in the preceding paragraphs.

4 35. By committing the acts alleged above, Defendant has, in the course of doing  
5 business, knowingly and intentionally exposed individuals to chemicals known to the State of  
6 California to cause cancer or reproductive toxicity without first giving clear and reasonable  
7 warning to such individuals, within the meaning of Health & Safety Code §25249.6.

8 36. These actions violate Health & Safety Code §25249.6 and render Defendant liable  
9 for civil penalties up to \$2,500 per day for each violation, as well as other remedies.

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11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff prays that the Court:

13 A. Grant civil penalties to be paid by Defendant for each violation of Health &  
14 Safety Code §25249.6;

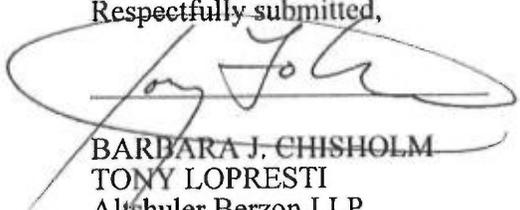
15 B. Pursuant to Health and Safety Code §25249.7, enter such injunctions or other  
16 orders as are necessary to prevent Defendant from exposing persons within the State of  
17 California to known reproductive toxins and cancer-causing chemicals resulting from the  
18 reasonably foreseeable use of Defendant's product without providing a clear and reasonable  
19 warning calculated to ensure that the warning message is available to individuals prior to  
20 exposure;

21 C. Award Plaintiff reasonable attorneys' fees and costs; and

22 D. Grant such other and further relief as the Court deems just and proper.

23 Respectfully submitted,

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25 Dated: September 12, 2016

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