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 ALAMEDA COUNTY
 September 04, 2015
 CLERK OF
 THE SUPERIOR COURT
 By Alicia Espinoza, Deputy
 CASE NUMBER:
 RG15784625

6 Attorneys for Plaintiff,
 7 Consumer Advocacy Group, Inc.

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

10 **COUNTY OF ALAMEDA**

11
 12 CONSUMER ADVOCACY GROUP, INC.,
 in the public interest,

13
 14 Plaintiff,

15 v.

16 CTC FOOD INTERNATIONAL, INC., a
 California Corporation; TAWA
 17 SUPERMARKET, INC., a California
 Corporation; ORIENTAL TRADING CO., is
 18 a business entity form unknown, HOA BINH
 POMONA SUPERMARKET, a business
 19 entity form unknown; and DOES 1-20;

20
 21 Defendants.

CASE NO.

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 CTC FOOD INTERNATIONAL, TAWA SUPERMARKET, INC., HOA BINH
 24 POMONA SUPERMARKET, 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

1 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting
2 as a private attorney general, brings this action in the public interest as defined under
3 Health and Safety Code section 25249.7, subdivision (d).

- 4 2. Defendant CTC FOOD INTERNATIONAL (“CTC”) is a California Corporation doing
5 business in the State of California at all relevant times herein.
- 6 3. Defendant TAWA SUPERMARKET, INC. (“TAWA”) is a California Corporation doing
7 business in the State of California at all relevant times herein.
- 8 4. Defendant ORIENTAL TRADING CO. (“ORIENTAL”) is a business entity form
9 unknown doing business in the State of California at all relevant times herein.
- 10 5. Defendant HOA BINH POMONA SUPERMARKET (“HOA”) is a business entity form
11 unknown doing business in the State of California at all relevant times herein.
- 12 6. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20,
13 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
14 complaint to allege their true names and capacities when ascertained. Plaintiff is
15 informed, believes, and thereon alleges that each fictitiously named defendant is
16 responsible in some manner for the occurrences herein alleged and the damages caused
17 thereby.
- 18 7. At all times mentioned herein, the term “Defendants” includes CTC, TAWA,
19 ORIENTAL, HOA and DOES 1-20.
- 20 8. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
21 times mentioned herein have conducted business within the State of California.
- 22 9. Upon information and belief, at all times relevant to this action, each of the Defendants,
23 including DOES 1-20, was an agent, servant, or employee of each of the other
24 Defendants. In conducting the activities alleged in this Complaint, each of the
25 Defendants was acting within the course and scope of this agency, service, or
26 employment, and was acting with the consent, permission, and authorization of each of
27 the other Defendants. All actions of each of the Defendants alleged in this Complaint
28 were ratified and approved by every other Defendant or their officers or managing agents.

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

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

7 JURISDICTION

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

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

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

25 BACKGROUND AND PRELIMINARY FACTS

26 14. In 1986, California voters approved an initiative to address growing concerns about
27 exposure to toxic chemicals and declared their right "[t]o be informed about exposures to
28 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,

1 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
2 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections
3 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources
4 from contamination, to allow consumers to make informed choices about the products
5 they buy, and to enable persons to protect themselves from toxic chemicals as they see
6 fit.

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

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

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

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

1 19. On October 1, 1981, the Governor of California added Cadmium and Cadmium
2 Compounds to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.*
3 tit. 27, § 27001(c)). Cadmium is known to the State to cause cancer and developmental,
4 male reproductive toxicity. Pursuant to Health and Safety Code sections 25249.9 and
5 25249.10, twenty (20) months after addition of Cadmium to the list of chemicals known
6 to the State to cause cancer and reproductive toxicity, Cadmium became fully subject to
7 Proposition 65 warning requirements and discharge prohibitions.

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

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

21 **SATISFACTION OF PRIOR NOTICE**

22 22. On or about January 9, 2015, Plaintiff gave notice of alleged violations of Health and
23 Safety Code section 25249.6, concerning consumer products exposures, subject to a
24 private action to CTC, TAWA and to the California Attorney General, County District
25 Attorneys, and City Attorneys for each city containing a population of at least 750,000
26 people in whose jurisdictions the violations allegedly occurred, concerning the product
27 Snack Foods containing Cadmium.

28

1 23. On or about June 22, 2015, Plaintiff gave notice of alleged violations of Health and
2 Safety Code section 25249.6, concerning consumer products exposures, subject to a
3 private action to CTC, ORIENTAL, HOA and to the California Attorney General,
4 County District Attorneys, and City Attorneys for each city containing a population of at
5 least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning
6 the product Seaweed containing Lead.

7 24. Before sending the notice of alleged violations, Plaintiff investigated the consumer
8 products involved, the likelihood that such products would cause users to suffer
9 significant exposures to Cadmium, Lead and the corporate structure of each of the
10 Defendants.

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

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

24 27. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
25 gave notices of the alleged violation to CTC, TAWA, ORIENTAL, HOA and the public
26 prosecutors referenced in Paragraphs 22 and 23.

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

4 **FIRST CAUSE OF ACTION**

5 **(By CONSUMER ADVOCACY GROUP, INC. and against CTC, TAWA and DOES 1-**

6 **20 for Violations of Proposition 65, The Safe Drinking Water and Toxic**

7 **Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

8 **Snack Food**

9 29. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
10 reference Paragraphs 1 through 28 of this complaint as though fully set forth herein. Each
11 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,
12 promoter, or retailer of Roasted Seaweed, which includes but is not limited to, "Orchids®
13 ROASTED SEAWEED; For Lunch Box; NET WET. 0.17 OZ(5g) 10SHEETS;
14 Distributed by ORIENTAL TRADING CO., So San Francisco, CA 94080; PRODUCT
15 OF KOREA; UPC: 0 74601 00867 3" (collectively referred to as "ROASTED
16 SEAWEED").

17 30. ROASTED SEAWEED contains Cadmium.

18 31. Defendants knew or should have known that Cadmium have been identified by the State
19 of California as a chemicals known to cause cancer and reproductive toxicity and
20 therefore was subject to Proposition 65 warning requirements. Defendants were also
21 informed of the presence of Cadmium in ROASTED SEAWEED within Plaintiff's notice
22 of alleged violations further discussed above at Paragraphs 22.

23 32. Plaintiff's allegations regarding ROASTED SEAWEED concerns "[c]onsumer products
24 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
25 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
26 exposure that results from receiving a consumer service." *Cal. Code Regs.* tit. 27, §
27 25602(b). ROASTED SEAWEED is a consumer product, and, as mentioned herein,
28

1 exposures to Cadmium took place as a result of such normal and foreseeable
2 consumption and use.

3 33. Plaintiff is informed, believes, and thereon alleges that between January 9, 2012 and the
4 present, each of the Defendants knowingly and intentionally exposed their California
5 consumers and users of ROASTED SEAWEED, which Defendants manufactured,
6 distributed, or sold as mentioned above, to Cadmium and Lead, without first providing
7 any type of clear and reasonable warning of such to the exposed persons before the time
8 of exposure. Defendants have distributed and sold ROASTED SEAWEED in California.
9 Defendants know and intend that California consumers will use and consume ROASTED
10 SEAWEED, thereby exposing them to Cadmium. Defendants thereby violated
11 Proposition 65.

12 34. The principal routes of exposure are through ingestion, dermal contact and inhalation.
13 Persons sustain exposures by eating and consuming ROASTED SEAWEED, handling
14 ROASTED SEAWEED without wearing gloves or any other personal protective
15 equipment, or by touching bare skin or mucous membranes with gloves after handling
16 ROASTED SEAWEED, as well as through direct and indirect hand to mouth contact,
17 hand to mucous membrane, or breathing in particulate matter dispersed from ROASTED
18 SEAWEED.

19 35. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
20 Proposition 65 as to ROASTED SEAWEED have been ongoing and continuous to the
21 date of the signing of this complaint, as Defendants engaged and continue to engage in
22 conduct which violates Health and Safety Code section 25249.6, including the
23 manufacture, distribution, promotion, and sale of ROASTED SEAWEED, so that a
24 separate and distinct violation of Proposition 65 occurred each and every time a person
25 was exposed to Cadmium by ROASTED SEAWEED as mentioned herein.

26 36. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
27 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
28 violations alleged herein will continue to occur into the future.

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

4 38. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
5 filing this Complaint.

6 **SECOND CAUSE OF ACTION**

7 **(By CONSUMER ADVOCACY GROUP, INC. and against CTC, ORIENTAL, HOA**
8 **and DOES 1-20 for Violations of Proposition 65, The Safe Drinking Water and**
9 **Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

10 **Seaweed**

11 39. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
12 reference Paragraphs 1 through 38 of this complaint as though fully set forth herein. Each
13 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,
14 promoter, or retailer of Roasted Seaweed, which includes but is not limited to,
15 “Orchido® Roasted Seaweed, Net Wt. (0.17oz, 5g) 10 Sheets. Distributed by Oriental
16 Trading Co., ‘DOP4150’ UPC: 0 74601 00867 3” (“SEAWEED II”).

17 40. SEAWEED II contains Lead.

18 41. Defendants knew or should have known that Lead have been identified by the State of
19 California as a chemicals known to cause cancer and reproductive toxicity and therefore
20 was subject to Proposition 65 warning requirements. Defendants were also informed of
21 the presence of Lead in SEAWEED II within Plaintiff's notice of alleged violations
22 further discussed above at Paragraphs 23.

23 42. Plaintiff's allegations regarding SEAWEED II concerns “[c]onsumer products
24 exposure[s],” which “is an exposure that results from a person's acquisition, purchase,
25 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
26 exposure that results from receiving a consumer service.” *Cal. Code Regs.* tit. 27, §
27 25602(b). SEAWEED II is a consumer product, and, as mentioned herein, exposures to
28

1 Cadmium and Lead took place as a result of such normal and foreseeable consumption
2 and use.

3 43. Plaintiff is informed, believes, and thereon alleges that between June 22, 2012 and the
4 present, each of the Defendants knowingly and intentionally exposed their California
5 consumers and users of SEAWEEED II, which Defendants manufactured, distributed, or
6 sold as mentioned above, to Lead, without first providing any type of clear and
7 reasonable warning of such to the exposed persons before the time of exposure.
8 Defendants have distributed and sold SEAWEEED II in California. Defendants know and
9 intend that California consumers will use and consume SEAWEEED II, thereby exposing
10 them to Lead. Defendants thereby violated Proposition 65.

11 44. The principal routes of exposure are through dermal contact, ingestion and inhalation.
12 Persons sustain exposures by eating and consuming SEAWEEED II, handling SEAWEEED
13 II without wearing gloves or any other personal protective equipment, or by touching
14 bare skin or mucous membranes with gloves after handling SEAWEEED II, as well as
15 through direct and indirect hand to mouth contact, hand to mucous membrane, or
16 breathing in particulate matter dispersed from SEAWEEED II.

17 45. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
18 Proposition 65 as to SEAWEEED II have been ongoing and continuous to the date of the
19 signing of this complaint, as Defendants engaged and continue to engage in conduct
20 which violates Health and Safety Code section 25249.6, including the manufacture,
21 distribution, promotion, and sale of SEAWEEED II, so that a separate and distinct
22 violation of Proposition 65 occurred each and every time a person was exposed to Lead
23 by SEAWEEED II as mentioned herein.

24 46. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
25 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
26 violations alleged herein will continue to occur into the future.

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

4 48. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
5 filing this Complaint.

6
7 **PRAYER FOR RELIEF**

8 Plaintiff demands against each of the Defendants as follows:

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

14
15 Dated: September 4, 2015

YEROUSHALMI & YEROUSHLAMI



16
17 BY: _____
18 Reuben Yeroushalmi
19 Attorneys for Plaintiff,
20 Consumer Advocacy Group, Inc.

FAX

To: Michael Marcus
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 Hayward, CA 94544

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Type	Case Number	Description	Amount
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 Current Payment: \$459.00
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Payment Method:
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