

ENDORSED
FILED
ALAMEDA COUNTY

AUG - 6 2015

CLERK OF THE SUPERIOR COURT
By Ellen Bailey Deputy

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

10 **COUNTY OF ALAMEDA**

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

14 Plaintiff,

15 v.

16 SHIRAKO CO., LTD., a Japanese Limited
17 Corporation; ARCADIA SUPERMARKET,
18 INC., a California Corporation; TAWA
19 SUPERMARKET, INC., a California
Corporation; and DOES 1-20;

20 Defendants.

CASE NO. **RG 15780925**

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)

BY FAX

21 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
22 Defendants SHIRAKO CO., LTD., ARCADIA SUPERMARKET, INC., TAWA
23 SUPERMARKET, INC., and DOES 1-20 as follows:

24 **THE PARTIES**

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

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 SHIRAKO, CO., LTD. ("SHIRAKO") is a Japanese Limited Corporation
4 doing business in the State of California at all relevant times herein.

5 3. Defendant ARCADIA SUPERMARKET, INC. ("ARCADIA") is a California
6 Corporation doing business in the State of California at all relevant times herein.

7 4. Defendant TAWA SUPERMARKET, INC. ("TAWA") is a California Corporation doing
8 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 SHIRAKO, ARCADIA,
16 TAWA 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 Alameda because one or more of the instances of
20 wrongful conduct occurred, and continues to occur, in the County of Alameda and/or
21 because Defendants conducted, and continue to conduct, business in the County of
22 Alameda 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 Cadmium-
23 bearing 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 October 1, 1981, the Governor of California added Cadmium and Cadmium
28 Compounds to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.*

1 tit. 27, § 27001(c)). Cadmium is known to the State to cause cancer and developmental,
2 male reproductive toxicity. Pursuant to Health and Safety Code sections 25249.9 and
3 25249.10, twenty (20) months after addition of Cadmium to the list of chemicals known
4 to the State to cause cancer and reproductive toxicity, Cadmium became fully subject to
5 Proposition 65 warning requirements and discharge prohibitions.

6 **SATISFACTION OF PRIOR NOTICE**

7 19. On or about January 9, 2015, Plaintiff gave notice of alleged violations of Health and
8 Safety Code section 25249.6, concerning consumer products exposures, subject to a
9 private action to SHIRAKO, TAWA and to the California Attorney General, County
10 District Attorneys, and City Attorneys for each city containing a population of at least
11 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the
12 product Seaweed containing Cadmium.

13 20. On or about April 15, 2015, 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 SHIRAKO, ARCADIA and to the California Attorney General, County
16 District Attorneys, and City Attorneys for each city containing a population of at least
17 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the
18 product Seaweed containing Cadmium.

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 Cadmium 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 Cadmium the
26 subject Proposition 65-listed chemicals of this action. Based on that information, the
27 attorney for Plaintiff who executed the Certificate of Merit believed there was a
28 reasonable and meritorious case for this private action. The attorney for Plaintiff attached

1 to the Certificate of Merit served on the Attorney General the confidential factual
2 information 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 SHIRAKO, ARCADIA, TAWA and the public
8 prosecutors referenced in Paragraphs 19 and 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 SHIRAKO, ARCADIA,**
14 **TAWA 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 **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 Seaweed, which includes but is not limited to, 1)
21 "OKAZUNORI® BRAND SEAWEED 8 PACK; SEASONED ROASTED SEAWEED;
22 6.25 INCH x 4.5 INCH; NET WT. 0.79 OZ (8 SHEETS); PACKED FOR SHIRAKO
23 Co., LTD.; 5-9, NAKAKASAI, 7-CHROME, EDOGAWA-KU, TOKYO 134-8502,
24 JAPAN; PRODUCT OF CHINA; UPC: 4 901673 256083;" and 2) "SHIRAKO
25 ROASTED SEASWEED TOKYO TEMAKI NORI; 7.2 INCH x 3.7 INCH; NET WT.
26 0.23 OZ (6 SHEETS); PACKED FOR SHIRAKO CO., LTD.; 5-9 NAKAKASAI,
27 EDOGAWA-KU, TOKYO 134-8502, JAPAN; PRODUCT OF CHINA; UPC: 0 92396
28 00002 3" (collectively referred to as "SEAWEED").

1 27. SEAWEED contains Cadmium.

2 28. Defendants knew or should have known that Cadmium has been identified by the State of
3 California as a chemical known to cause cancer and reproductive toxicity and therefore
4 was subject to Proposition 65 warning requirements. Defendants were also informed of
5 the presence of Cadmium in SEAWEED within Plaintiff's notice of alleged violations
6 further discussed above at Paragraphs 19 and 20.

7 29. Plaintiff's allegations regarding SEAWEED concerns "[c]onsumer products
8 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
9 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
10 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*
11 *25602(b)*. SEAWEED is a consumer product, and, as mentioned herein, exposures to
12 Cadmium took place as a result of such normal and foreseeable consumption and use.

13 30. Plaintiff is informed, believes, and thereon alleges that between April 15, 2012 and the
14 present, each of the Defendants knowingly and intentionally exposed their California
15 consumers and users of SEAWEED, which Defendants manufactured, distributed, or sold
16 as mentioned above, to Cadmium, without first providing any type of clear and
17 reasonable warning of such to the exposed persons before the time of exposure.

18 Defendants have distributed and sold SEAWEED in California. Defendants know and
19 intend that California consumers will use SEAWEED, thereby exposing them to
20 Cadmium. Defendants thereby violated Proposition 65.

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

27 32. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
28 Proposition 65 as to SEAWEED have been ongoing and continuous to the date of the

1 signing of this complaint, as Defendants engaged and continue to engage in conduct
2 which violates Health and Safety Code section 25249.6, including the manufacture,
3 distribution, promotion, and sale of SEAWEED, so that a separate and distinct violation
4 of Proposition 65 occurred each and every time a person was exposed to Cadmium by
5 SEAWEED as mentioned herein.

6 33. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
7 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
8 violations alleged herein will continue to occur into the future.

9 34. Based on the allegations herein, Defendants are liable for civil penalties of up to
10 \$2,500.00 per day per individual exposure to Cadmium from SEAWEED, pursuant to
11 Health and Safety Code section 25249.7(b).

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

14
15 **PRAYER FOR RELIEF**

16 Plaintiff demands against each of the Defendants as follows:

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

22
23 Dated: August 6, 2015

YEROUSHALMI & YEROUSHLAMI

24
25
26 BY: 

Reuben Yeroushalmi
Attorneys for Plaintiff,
Consumer Advocacy Group, Inc.